ATTACHMENT A

Attachment A

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 02-0809-T-P

VERIZON WEST VIRGINIA INC.
Petition in the matter of Verizon West Virginia Inc.'s
compliance with conditions set forth in 47 U.S.C. § 271 (c)

PETITION FOR CLARIFICATION
OF VERIZON WEST VIRGINIA INC.

The Commission's January 9, 2003 Order and Consultative Report exhaustively addresses and disposes of the issues under Section 271 of the Telecommunications Act. In order for Verizon WV to be able to comply fully with the letter and spirit of the Order and Consultative Report, however, Verizon WV respectfully requests that the Commission clarify a single requirement – that is, the requirement to file corrected Carrier-to-Carrier performance reports.

The Order and Consultative Report is now a matter of record with the Federal Communications Commission and constitutes the Commission's official consultation with the FCC under Section 271(d)(2)(B) of the Telecommunications Act. Clarification of the refiling requirement as Verizon WV requests will have no impact on Verizon WV's application at the FCC because the FCC has never found that a refiling requirement is necessary for purposes of 271 approval or otherwise. *See, e.g., In the Matter of Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia,* WC Docket No. 02-214, Memorandum Opinion and Order, released October 30, 2002. Consequently, merely clarifying the

Commission's refiling requirement (which is not a requirement for 271 approval) will not require the Commission to revisit or otherwise revise its Consultative Report to the FCC.

Verizon WV asks that the requirement to refile corrected reports be clarified in the following three respects: First, the requirement applies only to corrections that are material. Second, any material corrections to a filed report may be accumulated over a six month period and submitted to the Commission in a single filing. Third, the requirement to file corrections does not require refiling of an entire performance report.

The Carrier-to-Carrier Guidelines ("Guidelines") adopted by the Commission require Verizon WV to file a monthly report showing wholesale service performance on a CLEC Aggregate basis. In addition, Verizon WV makes a CLEC-specific performance report available upon request to each carrier receiving wholesale service in West Virginia. Each month, in the CLEC Aggregate report alone, Verizon WV populates more than two thousand fields with data. Data are reported for each of 524 submetrics showing performance for Verizon WV, performance for CLECs, the difference in performance, the number of observations for Verizon WV, the number of observations for CLECs, the standard deviation, the sampling error and the Z Score. In addition, the monthly performance report includes the metric number, description and performance standard, where applicable. The monthly performance reports will be used to calculate the amount of any bill credits due to CLECs under the Performance Assurance Plan ("PAP"), also recently adopted by the Commission.

Evidence in the Commission's 271 proceeding showed that Verizon reports wholesale service performance with a high degree of accuracy. Although Verizon strives for perfection, because of the extraordinary magnitude and complexity of the information

being compiled from numerous systems and sources, it is impossible as a practical matter to produce a performance report that contains no data-related errors. However, a correction to a few of the more than two thousand data points reported each month may impact PAP credits only minimally, or not at all.

The following are examples of such inconsequential corrections:

- Verizon reports a number of retail observations (*e.g.*, 5,000 lines provisioned) rather than the number subsequently determined to be correct, which is slightly different (*e.g.*, 5,010). Use of the correct number of observations, however, has no affect on the performance result (*e.g.*, it does not cause Verizon to fail a service quality threshold that it has passed (*e.g.*, 95%)).

- Verizon reports a service quality performance of 98% for CLECs rather than the correct result of 99%. But the required service quality threshold is 95%. Verizon has passed the required threshold in both instances.

- Verizon introduces a new retail product, and the metrics programming is not updated in time for the provisioning of a few orders. Inclusion of these additional observations (*i.e.*, the new orders) has no material impact on the service quality results filed by Verizon.

- Verizon establishes a new call center, but the calls into the new center are not initially captured in the speed of answer metric, thereby diminishing apparent call volume. Correction of this diminished call volume does not result in any material change in the performance results.

- Verizon determines that, with respect to its trunk order confirmation performance, it excluded orders that were re-sent due to internal Company errors. When the trunk orders are included, Verizon still passes the established service quality threshold.

- The performance report has a typographical error in the performance standard that shows >95% when it should be ≥ 95%. There is no change to performance.

Clearly, there is little benefit to any party from filing corrected information in the instances cited above. Nonetheless, a requirement to refile corrections without regard to whether they actually affect the PAP results imposes a substantial unnecessary administrative burden on Verizon. Verizon recently examined the costs incurred in its

submission of corrected performance reports with the FCC, which include far fewer metrics than are included in the West Virginia Guidelines. Verizon estimates that it incurs a cost of approximately $ 75,000 to refile a performance report.

Moreover, based on its experience with refilings in other states, Verizon WV expects the Commission's refiling requirement to generate more administrative paperwork than actual material changes in performance results. The net effect of the fourteen corrected reports submitted to the FCC has been to increase performance assurance payments by Verizon by less than one percent. A similar result has occurred in New Jersey, where the net effect of four refilings has been to increase incentive payments to CLECs by less than 1%.[1] For the three additional Verizon states that have adopted refiling requirements, no refilings have been necessary in Maine, and the obligation to refile has not yet become effective in Maryland and the District of Columbia.

The Commission should clarify that Verizon WV is required to file corrected data only in the case of a material error. A very conservative measure of what would be a material error is one that has an effect of more than a $1000 increase on the calculation of PAP remedies for any CLEC, or more than a $10,000 decrease to Verizon WV's benefit. Such a clarification would be consistent with requirements imposed by the Maryland Commission in connection with Verizon's application to provide competitive long distance service in that state.

In addition, the Commission should clarify that any material corrections discovered may be accumulated, and included in a single filing within six months

[1] If, after experience with refiling in West Virginia, Verizon WV finds similarly inconsequential error rates, Verizon WV may propose that the Commission substantially modify or eliminate the refiling requirement.

following the filing of the initial report. More than one filing of corrected data related to a single performance report, or ongoing, piecemeal corrections to numerous reports previously filed, would create confusion for the Commission and the CLECs. Moreover, it would be unworkable for Verizon from a production point of view. A period of six months would allow sufficient time for potential errors to surface; review to determine whether an error has in fact occurred; processing of appropriate change controls; identification of any necessary software programming, and implementation through the established software release schedule; calculation of whether the error was material; and the processing, review and filing of a correction. A four-month cycle was originally implemented by Verizon for submission of corrections to the FCC, but it proved to be too short a timeframe to identify potential errors and perform the work necessary to submit accurate corrections.[2]

Finally, the Commission should clarify that the filing of corrected data may be done on an exception basis. It should not be necessary for Verizon WV to re-run and file

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[2] Determining whether an error is material does not necessarily require recalculation of the metric, or completion of all work activities necessary to file corrected results. Determining materiality is only the threshold inquiry, and additional activities must be completed before corrected results can be filed.

The following example shows how materiality can be determined without recalculating performance results. Assume a metric measuring % Missed Appointments, with a performance standard of parity with retail, and results of 4% for retail and 1% for CLECs. After filing the performance report, Verizon WV discovers a coding error that resulted in omission of a retail product. In such a case, Verizon WV would not determine the % Missed Appointments for the omitted orders. Rather, Verizon WV would first determine the number of orders for the omitted product, without regard to whether appointments were missed for those orders. If reported results had been based on 1000 retail orders, the 4% Missed Appointments indicates missed appointments on 40 orders. If Verizon WV determined that 2 retail orders had been omitted, missed appointments could have occurred on 40 to 42 orders. Retail performance could thus range from 3.99% (40 of 1002) to 4.19% (42 of 1002). In either case, the performance standard would be met, so the error would be determined immaterial without recalculation of the performance results or completing the work activities necessary for refiling of corrected results.

an entire report in order to correct a handful of material errors. The Commission's purpose would be achieved by requiring the filing of corrected data only. To require a complete re-run and refiling would result in undue confusion for the recipients of the reports, and impose a burden on Verizon that is both substantial and unnecessary.

WHEREFORE, for the above reasons, Verizon West Virginia Inc. respectfully requests that the Commission clarify its Order and Consultative Report as set forth above.

Respectfully submitted,

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ATTACHMENT B

Attachment B

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

REPORT OF

DIVISION OF COMMUNICATIONS

CASE NO. PUC-2002-00088

PETITION OF CAVALIER TELEPHONE, LLC FOR INJUNCTION AGAINST VERIZON VIRGINIA INC. FOR VIOLATIONS OF INTERCONNECTION AGREEMENT AND FOR EXPEDITED RELIEF TO ORDER VERIZON TO PROVISION UNBUNDLED NETWORK ELEMENTS IN ACCORDANCE WITH THE TELECOMMUNICATIONS ACT OF 1996

JANUARY 30, 2003

(Redacted Version)

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EXECUTIVE SUMMARY

On October 28, 2002, following the complaint of Cavalier Telephone, LLC ("Cavalier"), the Commission directed the Staff to investigate the DS-1 unbundled network element ("UNE") loop provisioning practices of Verizon Virginia Inc. ("Verizon"). Allegiance Telecom of Virginia, Inc. ("Allegiance"), NTELOS Network Inc. and R&B Network Inc. (jointly "NTELOS"), Covad Communications Company ("Covad"), AT&T Communications of Virginia, LLC ("AT&T"), and XO Virginia, LLC ("XO") joined Cavalier's complaint. The Staff has now concluded its investigation.

Cavalier's complaint stemmed from a mid-2001 increase in the number of DS-1 UNE loop requests rejected by Verizon for reasons of "no facilities." Cavalier suggested this increase was caused by an abrupt change in Verizon's provisioning policy. The effect of this policy change, according to Cavalier, was harm to both Cavalier and its customers.

In conducting its research, the Staff relied on the knowledge it had gained from previous, similarly styled, formal complaints; related informal complaints; field investigations; both formal and informal discovery requests; meetings; and the comments of the various parties in this proceeding. In addition, the Commission's Office of General Counsel examines the legal issues surrounding Verizon's provisioning policy in a separately filed brief. Following is a summary of the Staff's investigation and its findings.

The Staff focused on two key areas -- Verizon's DS-1 UNE loop provisioning policy and, more importantly, whether this provisioning policy was in conflict with the Commission's pricing methodology adopted in its proceeding to determine prices for Verizon to charge competitive local exchange carriers (Case No. PUC-1997-00005).

Verizon's present DS-1 UNE loop provisioning policy centers on the notion that it does not have to construct (build) new facilities for its competitors. In reviewing this policy, the Staff discovered that Verizon considers certain activities as construction that should be described as maintenance. Therefore, even when facilities exist and would require only routine maintenance to activate, Verizon turns back requests for DS-1 UNE loops for reasons of "no facilities."

More importantly, the Total Element Long Run Incremental Costs ("TELRIC") prices established by the Commission contemplated the DS-1 UNE loop construction and maintenance activities that Verizon asserts it is not obligated to perform. Therefore, by turning back DS-1 UNE loop requests from its competitors, Verizon is refusing to perform work for which it is both fairly and fully compensated.

The Staff finds that Verizon's DS-1 UNE loop provisioning policy did, in effect, change. Second, that Verizon has distorted the definition of construction to its unfair advantage. Third, that the provisioning activities Verizon will no longer perform are reflected in the Commission's TELRIC prices. Finally, the Staff finds that both competition and customers are harmed by Verizon's DS-1 UNE loop provisioning policy.

Among several possible remedies, the Staff suggests that the Commission consider requiring Verizon to provision DS-1 UNE loops using assumptions already established in the TELRIC proceeding. Alternatively, the Commission may decide that

Verizon is not required to construct new DS-1 UNE loop facilities, but that it is obligated only to rearrange existing plant. In that case, the Staff suggests that the Commission should consider a re-determination of DS-1 UNE loop rates.

STAFF REPORT

PETITION OF CAVALIER TELEPHONE, LLC

CASE NO. PUC-2002-00088

INTRODUCTION

On October 28, 2002, the Commission directed the Staff to investigate Verizon Virginia Inc.'s ("Verizon") policies and practices concerning the provisioning of DS-1 unbundled network element ("UNE") loops to Cavalier Telephone, LLC ("Cavalier"). This report, as well as the associated brief filed by the Office of General Counsel ("OGC"), is the Staff's response to the Commission's directive.

The Staff, given the potential significance of this proceeding upon competition, customer service, and the public interest, took a comprehensive approach to the investigation. The initial concentration came from a detailed examination of Verizon's DS-1 UNE loop provisioning policies and practices. This primarily technical review was accompanied by an analysis of the costing and pricing methodologies in the context of whether Verizon's provisioning activities are fairly compensated for by the Total Element Long Run Incremental Costs ("TELRIC") rates adopted in Case No. PUC-1997-00005 ("Case 97-05").[1]

Contemporaneously, OGC engaged in an assessment of Verizon's obligations under Virginia law. OGC also considered the potential effect of any Federal

[1] *Ex Parte: To determine prices Bell Atlantic – Virginia, Inc. is authorized to charge Competitive Local Exchange Carriers in accordance with the Telecommunications Act of 1996 and applicable State law.* Case No. PUC-1997-00005. Final Order, released April 15, 1999.

Communications Commission ("FCC") action in its pending Triennial Review[2] proceeding, as well as the scope of the Commission's jurisdiction as it relates to the Telecommunications Act of 1996 ("Act")[3] and the FCC's rules and orders implementing the Act.

Some of the information necessary for the investigation was developed in prior Commission investigations.

In 2001, Broadslate Networks of Virginia, Inc. ("Broadslate") and 360° Communications of Charlottesville d/b/a Alltel ("Alltel"), filed petitions similar to that of Cavalier (Case Nos. PUC-2001-00166 and PUC-2001-00176, respectively). As in this proceeding, the Commission ordered the Staff to investigate the provisioning policies and practices of Verizon with regard to UNE loops. The Staff was well underway with that investigation when both petitions were withdrawn and dismissed in early 2002 as a result of the departures of Broadslate and Alltel from the Virginia marketplace.[4]

The matter of DS-1 UNE loop provisioning was once again the subject of a Commission investigation in Case No. PUC-2002-00046,[5] where the area of interest was Verizon's compliance with the conditions set forth in 47 U.S.C § 271(c) ("271"). In his July 12, 2002, report to the Commission, the Hearing Examiner found "that to fulfill our consulting role the Commission should advise the FCC that Verizon Virginia's policy has

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[2] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, CC Docket Nos. 01-339, 96-98, 98-147, released December 20, 2001.

[3] P.L. 104-104 (February 8, 1996).

[4] Case No. PUC-2001-00176 Dismissal Order issued February 11, 2002; Case No. PUC-2001-00166 Dismissal Order issued February 20, 2002.

[5] *In the Matter of Verizon Virginia Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)*, filed July 1, 2002.

a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry accounting rules, and is inconsistent with TELRIC-pricing principles."[6]

In addition to Virginia, both the Texas and New York commissions have active dockets addressing similar complaints regarding the DS-1 UNE loop provisioning practices of Southwestern Bell Telephone and Verizon New York Inc., respectively. [7]

Also, the Maryland Public Service Commission ("Maryland"), in a December 16, 2002, letter to Verizon regarding the Maryland 271 proceeding, listed Verizon's construction policy as one among its several concerns with Verizon's 271 application (see Attachment 1). As a temporary measure, Verizon, at the request of a competitive local exchange carrier ("CLEC"), will be required automatically to convert DS-1 UNE loop orders (that are turned back for "no facilities") to special access orders and then convert the newly built special access service back to a UNE. In a letter dated December 17, 2002, Verizon responded by indicating that it would comply with the Maryland's

[6] Report Of Alexander F. Skirpan, Jr., Hearing Examiner in PUC-2002-00046 at page 6, filed on July 12, 2002.

[7] Footnote 15 from Covad *Comment* at page 14 (filed December 9, 2002) "*See Joint CLEC Complaint For Post-Interconnection Dispute Resolution with Southwestern Bell Telephone, L.P. and Request for Interim Ruling Regarding DS1 UNE Loop Provisioning Issues*, Docket No. 27001, Order Approving Settlement to Request for Interim Ruling (Tex. P.U.C. Dec. 5, 2002)" and Footnote 14 from Covad Comment at page 12 (filed December 9, 2002) "*See Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates For Unbundled Network Elements*, Case 98-C-1357, Ruling on Module 3 Schedule (issued August 24, 2000) (denying Verizon's first request to stay), Ruling Denying Request for Reconsideration (issued September 18, 2000) (denying Verizon request for reconsideration that denied Verizon's request to stay), Recommended Decision on Module 3 Issues, at 9-10 (issued May 16, 2001) (denying Verizon's request that the Commission forebear from setting new UNE rates), Order on Unbundled Network Elements Rates, 11-12 (issued January 28, 2002) (denying Verizon's request on exceptions that the proceeding be deferred and denying Verizon's August 23, 2001 renewed request that a decision be postponed). In total and in a single proceeding, Verizon requested that the Commission avoid moving forward five times and each time the Commission denied Verizon's request."

conditions (see Attachment 2).[8] Maryland indicated that it would monitor this Commission's DS-1 UNE loop provisioning proceeding in order to determine if further action is required.[9]

Additionally, the Public Service Commission of West Virginia, as a result of its 271 proceeding,[10] has, notwithstanding a finding that Verizon West Virginia was 271 checklist compliant, directed that a proceeding be docketed to address Verizon West Virginia's "no facilities" policy.

PROCEDURAL HISTORY

Cavalier, by its petition of April 19, 2002, requested emergency and injunctive relief from the DS-1 unbundled network element ("UNE") loop provisioning practices of Verizon. The petition apparently stemmed from a rise in the number of Cavalier DS-1 UNE loop orders rejected by Verizon for reasons of "no facilities." This increase in rejected UNE orders, according to Cavalier, was occasioned by a mid-2001 shift in Verizon's policy where it would no longer provision DS-1 UNE loops when it had to perform certain provisioning functions. Cavalier alleges that Verizon's current DS-1 UNE loop provisioning practices are discriminatory, harmful to competition, violative of its Interconnection Agreement with Verizon, violative of both federal and state laws, violative of both federal and state rules, and violative of the best practices mandate of

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[8] On November 22, 2002, Verizon issued a revision to its provisioning policy that would allow CLECs, at their option, automatically to convert rejected DS-1 UNE loop orders to special access services. The policy revision, which affects Virginia, does not, however, include the automatic reversal from special access to a UNE that will occur in Maryland.

[9] Maryland PSC letter to Verizon at page 4 (December 16, 2002) (See Attachment 1).

[10] Case No. 02-0809-T-P, *Petition in the matter of Verizon West Virginia Inc.'s compliance with conditions set forth in 47 U.S.C. § 271(c).*

the Commission's order approving the merger of GTE Corporation and Bell Atlantic Corporation.[11]

Verizon, on May 10, 2002, responded to the Cavalier petition by declaring that its DS-1 UNE loop provisioning policy had not, in fact, changed. Verizon further maintained that it is under no obligation to build new facilities to fulfill the DS-1 UNE loop orders of its competitors. Verizon requested that the Commission affirm its DS-1 UNE loop provisioning policy as consistent with applicable law, rules, and the aforementioned GTE Corporation and Bell Atlantic Corporation merger, and further requested that the Cavalier petition be dismissed.

Cavalier answered Verizon's motion with its response of May 22, 2002, where it rejected Verizon's legal arguments and concluded that the Commission should deny Verizon's motion to dismiss its petition.

Verizon, on June 3, 2002, filed a reply to the Cavalier response where it reiterated its argument that its DS-1 UNE loop provisioning policy is consistent with FCC rules.

The Commission, in its aforementioned initial Order Directing Investigation of October 28, 2002, denied Verizon's motion to dismiss.

Allegiance Telecom of Virginia, Inc. ("Allegiance") filed a motion to intervene on November 5, 2002. Motions to intervene were also filed by NTELOS Network Inc. and R&B Network Inc. (jointly "NTELOS"), Covad Communications Company ("Covad"), and AT&T Communications of Virginia, LLC ("AT&T"). NTELOS, in its motion, requested that the Commission expand its investigation to include Verizon's

[11] Case No. PUC-1999-00100, Order Approving Petition, entered November 29, 1999.

UNE provisioning practices as they relate to digital subscriber line ("DSL") and voice grade loops.

Verizon, on November 15, filed its opposition to the intervention requests of Allegiance, NTELOS, Covad, and AT&T.

Allegiance, on November 22, 2002, filed a notice where it waived its right to respond to Verizon's opposition to its motion to intervene.

The Commission, in an order dated November 26, 2002, granted the intervention requests of Allegiance, NTELOS, Covad, and AT&T, but denied NTELOS' request to expand the investigation to include DSL and voice grade loops. The order also served to modify the procedural schedule originally set forth in the Commission's order of October 28, 2002.

XO Virginia, LLC ("XO"), on December 13, 2002, filed a motion to intervene. The Commission, in its order of January 24, 2003, granted the XO motion.

COMMENTS OF PARTIES

As noted above, the Commission's Order Directing Investigation, issued October 28, 2002, allowed Verizon to file a Further Explanation of High Capacity UNE Loop Provisioning Practices, Cavalier to file comments and Verizon to file reply comments. By subsequent order on November 26, 2002, the Commission modified the procedural schedule and allowed the intervenors to file comments.

On November 15, 2002, Verizon filed a Further Explanation of High Capacity UNE Loop Provisioning Practices. On December 9, 2002, Cavalier, AT&T, Covad, NTELOS, and Allegiance filed comments. On December 30, 2002, Verizon filed its

reply to the comments of the other parties. These filings and comments are summarized below:

Verizon's Further Explanation (November 15, 2002)

Verizon reasserted that its provisioning policy did not change as Cavalier suggested in its complaint. Further, Verizon argued that its UNE DS-1 loop provisioning policy is consistent with federal law. Verizon provided further detail outlining its DS-1 UNE loop provisioning practices. Verizon urged the Commission to stay this proceeding pending the outcome of the FCC's Triennial Review.

Verizon also noted that "... the only real question in this debate is where to draw the line in terms of defining whether or not facilities exist and what activities constitute construction."[12] In that regard, Verizon stated it has "... adopted reasonable policies under which Verizon has and will continue to do more than is required by the Act."[13]

Verizon stated, "... where facilities do not exist, CLECs have the option of ordering special access."[14] Verizon maintained, however, that it "... does not (and is not required) to construct network elements solely for the purpose of unbundling those elements where the construction work involves installing new copper or fiber cabling, equipment, or electronics."[15] Verizon also stated, "[a]lthough Verizon will make reasonable attempts to clear defective cable pairs that exist in the end user's service terminal if Verizon cannot clear defective facilities and if no other spare facilities exist,

[12] Verizon's *Further Explanation* at page 6, filed November 15, 2002.

[13] *Id.*

[14] *Id.* at page 7.

[15] *Id.*

construction is required to add copper facilities at the end user location before a DS-1 can be provisioned."[16]

Cavalier

Cavalier discussed the effect of Verizon's policy on UNE provisioning and stated that "Verizon agreed that Cavalier could order DS-1 circuits as UNEs, then re-submit the rejected orders as special access, and then convert the special access circuits to UNEs. That process led to the percentage of "no facilities" orders leveling off at about 30%."[17] Cavalier further stated that "[m]oreover, the 'UNE-special-UNE' process adds delay and expense to the ordering process, for both Cavalier and Verizon."[18]

"Second, Cavalier points to the suddenness of the change in Verizon's practices. Before May 2001, Verizon generally provisioned UNE DS-1 orders of the type that it now rejects for 'no facilities'."[19]

Third, Cavalier argued that "... Verizon's new practices have an obvious and immediate effect on the ability of Cavalier and other competitors to serve customers, and on the pricing of Verizon's DS-1 circuits."[20]

AT&T

AT&T stated that "[b]y provisioning a substantial portion of high-capacity loops as special access rather than UNEs, Verizon in effect increases its average revenue per

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[16] *Id.* at page 8.

[17] Cavalier's *Comments* at page 1, filed December 9, 2002.

[18] *Id.* at page 2.

[19] *Id.*

[20] *Id.* at page 3.

high-capacity loop provisioned to CLECs above the revenues it would obtain under TELRIC-compliant UNE rates."[21]

AT&T also asserted that Verizon's windfall from forcing CLECs to obtain high-capacity loops as special access is substantial and, as reported to the FCC, that its rate of return from special access in 2001 was 37.08% (excluding the NYNEX part of its business), or over three times the 11.25% the FCC previously found to be a reasonable rate of return.[22] AT&T continued by stating, "[e]ach high-capacity loop that Verizon sells at special access prices rather than UNE prices contributes to this unearned windfall."[23]

AT&T commented that Verizon's construction policy was discriminatory in that "... it is uncontested that Verizon VA does not refuse to provision retail customer orders...." [24] AT&T also pointed out that "... orders placed by reseller CLECs are also routinely filled. Only those orders placed by Verizon VA's wholesale UNE customers are rejected rather than filled. Thus, CLECs using UNEs -- and their customers -- do not have nondiscriminatory access to high-capacity facilities."[25]

AT&T suggested three remedies. [26] First, the Commission should reject Verizon's "no facilities" policy in the provision of high-capacity loops in Virginia and develop a non-discriminatory loop ordering and provisioning policy consistent with the

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[21] AT&T's Comments at page 1, filed December 9, 2002.

[22] *Id.* at page 2.

[23] *Id.*

[24] *Id.* at page 3

[25] *Id.*

[26] *Id.* at pages 4-5.

Act and this Commission's policies under Virginia law. Second, the Commission should take steps to ensure that intrastate special access is priced at TELRIC. Third, the Commission should develop and implement special access metrics, standards and remedies in the Virginia Carrier-to-Carrier ("C2C") Guidelines and the Virginia Performance Assurance Plan ("PAP"). By taking these three actions, according to AT&T, the Commission will avoid entanglement in complex technical issues of what is construction and what is not construction.

Covad

Covad requested that the Commission "... rule that Verizon's policy, pursuant to which it rejects CLEC requests for DS-1 UNE loops based on "no facilities," violates both federal and Virginia law."[27] Covad further asked that"... the Commission issue an interim ruling prohibiting Verizon from implementing this policy and requiring that it continue providing DS-1 UNE loops pursuant to the same process Verizon used prior to July 2001."[28] According to Covad, when an order is rejected by Verizon, "... it must either cancel the customer's order, or fulfill the order using Verizon's much higher priced special access service, which may make the service offering economically untenable."[29]

Covad stated that it "... expects an occasional LOF facilities rejection from the Verizon UNE process. Covad also expects that loops will be provisioned and conditioned for use as UNEs just as they would be if Verizon were using the loop to serve its own customers."[30]

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[27] Covad's *Comments* at page 1, filed December 9, 2002.

[28] *Id.*

[29] *Id.* at page 3.

[30] *Id.* at pages 5-6.

Covad concluded that "*Verizon's 7/24/02* [7/24/01] *No Facilities Policy* significantly decreases customers' willingness to order service from a CLEC instead of Verizon."[31] Covad stated that monetary penalties or damages cannot repair the harm suffered by CLECs. "Once customers form an opinion that a CLEC is unable to provide timely, reliable service, the CLEC's reputation and business is irreparably harmed."[32]

NTELOS

NTELOS indicated that, because of Verizon's "no facilities" policy, it is required to submit two orders. The first order is for a DS-1 UNE and the second order is to establish a special access DS-1 when the first order is denied. According to NTELOS, this duplication increased its costs and it resulted in more than a three-week delay in the end user obtaining service:

> For a six month period in 2002 (March through September), NTELOS submitted 117 UNE DS-1 orders in Virginia and West Virginia (the vast majority in Virginia) and 31 were denied by Verizon for no facilities. Here is the breakdown on the no facility explanations:
>
> - 20 of the 31 (or 65%) were for no apparatus/doubler case
> - 8 of the 31 (or 25%) were for no cable facilities
> - 3 of the 31 (or 10%) were for no multiplexer equipment or capacity.[33]

NTELOS suggested that the Commission "... rule on whether adding a loop conditioning apparatus case fits the definition of 'construction for no facilities'."[34] NTELOS also stated, "[p]erhaps the most ludicrous part of Verizon's UNE DS-1 policy is that CLECs can obtain UNE DS-1 rates on denied orders but only after first ordering

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[31] *Id* at page 14.

[32] *Id.* at page 17.

[33] NTELOS *Comments* at page 2, filed December 9, 2002.

[34] *Id.*

special access. Verizon is not totally blocking CLECs from obtaining UNE DS-1s, only making it a terrific hassle to do so."[35] NTELOS suggested that "... Verizon is actually increasing its own expenses by not simply provisioning the UNE DS-1 order when it is first received."[36]

NTELOS pointed out that, "[w]hen forced to order Special Access, NTELOS orders from the FCC No. 1 tariff (federal) and orders the circuit on a 3-year term, only paying $1.00 for the non-recurring charge. NTELOS is required to keep the circuit for at least two months under special access pricing. NTELOS informs Verizon it wants to convert the special access DS-1 pricing to UNE DS-1 pricing and whereby Verizon charges NTELOS a termination liability charge."[37] The net increase in Verizon's charges to NTELOS is $128.78 for all of this extra effort and delay. NTELOS concluded that "[t]he current UNE DS-1 provisioning process is not parity, it's not even good business."[38]

Allegiance

Allegiance also requested that the Commission "... not wait for the outcome of the FCC's Triennial Review before taking action on Cavalier's petition. There is no set timetable for the issuance of a decision in the federal Triennial Review proceeding and there is no guarantee that the FCC will resolve the Verizon provisioning issues in that proceeding."[39] Allegiance stated that "... every day that passes with Verizon being

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[35] *Id.* at page 3.

[36] *Id.* at page 3.

[37] *Id.*

[38] *Id.* at page 5.

[39] Allegiance *Comments* at page 1, filed December 9, 2002.

unrestrained in its application of its 'no facilities' policy is bad for competition and therefore bad for consumers in Virginia."[40]

Allegiance further stated that "[w]hile Verizon may not be required to provide a superior network for use by its competitors; it is required to make modifications to [its existing network facilities] to the extent necessary to accommodate interconnection or access to network elements."[41]

Allegiance concluded that "[t]he fact that Verizon routinely installs repeaters, repeater shelves, doubler/apparatus cases, multiplexers and additional multiplexer capacity to make DS-1s available to its retail end users demonstrates that the upgrades Verizon characterizes as major construction can be and are being done on a routine basis."[42]

Verizon's Reply Comments (December 30, 2002)

Verizon asserted that "... DS-1 UNE and DS-1 special access are different services, and, therefore, there can be no requirement that customers of these different services be treated the same. Special access and UNEs have different terms and conditions, different prices, different customers, and entirely different legal requirements."[43]

Verizon also asserted that "... the practice of making distinctions among customers in the structuring of utility pricing and service offerings is well established and

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[40] *Id.*

[41] *Id.* at page 3.

[42] *Id.* at page 4.

[43] Verizon Reply Comments at page 3, filed December 30, 2002.

permissible under Virginia law. Further, if those distinctions have a reasonable basis – such as federal limitations on unbundling – they should be upheld."[44]:

> The Eighth Circuit and the FCC have clearly held that Verizon is not required to construct new UNEs for CLECs and then make them available as UNEs at TELRIC prices, regardless of whether Verizon would do so for a retail customer. Therefore, under federal unbundling rules, UNE customers and retail customers are not similarly situated with respect to construction of new facilities, and there is no obligation under federal or state anti-discrimination provisions to treat UNE and retail customers similarly with respect to the construction of facilities.[45]

First, with respect to loop conditioning, Verizon explained that, "... under the rules of the FCC 'conditioning' refers only to the *removal* from a loop of any devices that compromise its ability to support certain services; it does not require an ILEC to *install* additional equipment."[46]

Verizon further stated that "[t]he requirement to *modify*, therefore, addresses the need to provide *access* to the existing network – not to create or build *new* network elements for the purpose of providing them to CLECs on an unbundled basis."[47]

Verizon suggested that "[t]he interim relief suggested by Covad is neither warranted nor appropriate. Not only has the FCC repeatedly ruled that Verizon's DS-1 UNE provisioning policy does not violate the Act or the FCC's rules, but NTELOS' comments reveal that Cavalier's and the other intervenors' claims of severe financial harm are grossly overstated."[48]

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[44] *Id.* at page 9.

[45] *Id.*

[46] *Id.* at page 17

[47] *Id.*

[48] *Id.* at page 19.

Verizon asserted that "AT&T's proposal that the Commission establish TELRIC pricing for Verizon's tariffed special access services and to establish metrics, standards, and remedies for special access in the Virginia Carrier-to-Carrier ("C2C") Guidelines and the Virginia Performance Assurance Plan ("PAP") should be soundly rejected for several reasons."[49] Verizon continued that "[i]n Virginia, special access is a retail service included within the service classification for Basic Local Exchange Telephone Services ("BLETS") under the Verizon Virginia Inc. Plan for Alternative Regulation (the "Plan"). Under the Plan, Verizon does not have upward pricing flexibility for BLETS – indeed, it may not increase the price of those tariffed services at all until January 1, 2004, and then only subject to specific constraints spelled out in the Plan."[50]

Verizon concluded for all the reasons provided in its comments that the Commission should await the action of the FCC in its Triennial Review in order to avoid a collision course with the action of the FCC. Verizon suggested that "... the Commission should reject the interim relief requested by Covad, and reject AT&T's proposals to expand this investigation to establish UNE pricing and performance metrics and penalties for non-UNE special access."[51]

STAFF INVESTIGATION

Verizon occupies a peculiar position in Virginia's telecommunications marketplace. It is obligated to provide services to both its competitors as well as to its

[49] *Id.* at page 20.

[50] *Id.* at pages 22-23. The Staff notes that Verizon is not permitted to increase rates for tariffed special access pursuant to the Plan as Verizon apparently claims. Section R of the Plan specifically states that access charges are not included in the categories of services (i.e. BLETS) for pricing purposes. Pricing of access services are to be considered separately by the Commission.

[51] *Id.* at page 26.

own retail customers. As the Staff understands it, Verizon must perform these seemingly contradictory functions in a manner that it is not unreasonably discriminatory. Therein lies the conflict.

Fulfilling its duty under the Act, this Commission adopted a pricing methodology known as TELRIC, which was considered just and reasonable compensation for the UNEs Verizon provides, including the provisioning of DS-1 UNE loops. As such, and central to this investigation, is the issue of whether or not Verizon can determine the conditions under which it will provision UNEs at TELRIC rates. In other words, may Verizon refuse to construct, build, rearrange, or otherwise provision facilities for CLECs when those very activities were incorporated into the TELRIC prices set by the Commission?

Before these questions can be answered, and as a preliminary matter, we will clarify the nature of DS-1 service.

Provisioning Review

What is a DS-1?

A DS-1 (digital service, level 1), sometimes referred to as a T-1 (trunk, level 1), is a digital circuit capable of sending and receiving voice, video, or data at 1.54 Mbps (million bits per second). It can be divided into 24 distinct channels, each of which is known as a DS-0 (digital service, level zero) and capable of 64 Kbps (64,000 bits per second) transmissions. A DS-1 is, therefore, equivalent to 24 DS-0s. By way of comparison, POTS (plain old telephone service) can be provisioned over a single 64 Kbps channel. Thus, a DS-1 can be configured as 24 POTS lines.

A DS-1 loop can consist of one or two twisted copper cable pair(s) extended from a central office to a customer's premises. In the central office, the copper cable pair will be connected to a central office repeater[52] and then extended to the CLEC's collocation space.[53] At the customer's premises, the copper cable pairs are terminated on a "smart jack"[54] and then extended by the CLEC to the customer's telecommunications equipment. A DS-1 may also need repeaters (also referred to as "doublers") in outside plant to regenerate the digital signal. The copper cable pairs extended from a central office to a customer's premises may use several different sections of cable that are connected together at various junctions and interconnection points in between. Records of these cable runs are maintained to indicate how specific cable pairs are configured and where they may be accessed. Outside plant cable pairs may need to be rearranged or reassigned in order to fulfill a service request at a specific customer's premises.

This proceeding deals exclusively with DS-1 loops. Of course, as just mentioned, a loop is a facility that extends from a central office to a customer's premises. This distinguishes a loop facility from a *transport* facility, which connects one central office to another. Typically, a loop connects a single customer to the network where transport facilities aggregate services from many customers. Moreover, transport facilities are usually provided using technologies different from DS-1 loops (higher versus lower capacity).

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[52] A device normally used to regenerate, or purify, a digital signal and to accommodate, if necessary, any distance limitations.

[53] See NTELOS interrogatory responses at page 2, filed January 2, 2003.

[54] A device used as both a rate demarcation point as well as a DS-1 circuit continuity testing point.

General Provisioning Functions (Construction vs. Maintenance)

In order for customers to be served, telecommunications facilities must first, of course, be constructed. Initially, for example, cable plant is engineered and constructed to meet forecasted demand and to provide for reasonable growth. Therefore, as more customers are added to the network, and as working facilities start to approach capacity, new capacity must be engineered and constructed.

Whenever cable plant is under construction, the initial investments are accounted for as plant-under-construction until the work is completed. The investments accounted for as plant-under-construction are then transferred into working plant accounts. This accounting transaction indicates that the plant is working and generally is available for new assignments. However, not all of the new plant is immediately reflected in the assignment system (that is, plant ready and available for provisioning). A portion of the new cable may be left unterminated on one or both ends until there is a customer request requiring that the facility be placed into service.

Following the initial construction, or reinforcement project, rearrangements may be needed to extend the cable pairs to a point where they can fulfill a specific customer request. Rearrangement activity to place unterminated cable pairs into service may simply involve splicing cable pairs together in order to establish continuity between a central office and a customer's premises. This splicing activity – which is not necessarily inexpensive or uncomplicated -- is correctly accounted for as a *maintenance* expense, as opposed to a *capital* cost. Therefore, when customer service requests (whether wholesale or retail) are fulfilled by rearranging existing facilities, it is not a construction activity, but one of maintenance and, as such, accounted for accordingly.

Cable facilities are also held in reserve for ready deployment to meet unexpected or unforecasted customer demand, but may not yet have been placed into the assignment system as assignable. Clearly the plant has been constructed (because it exists), but its existence may not be readily apparent to provisioning personnel.

Verizon's UNE Provisioning Policy

Verizon, in a letter sent to CLECs dated July 19, 2001, stated its policy with respect to provisioning DS-1 (and other) UNEs (see Attachment 3, pages 23-25). Verizon stated that it will provide DS-1 UNE loop facilities only "where existing facilities are currently available." Verizon also asserted that it is not obligated to construct new UNEs for CLECs. The letter also described the specific situations that, in its view, constitute construction activity. Lastly, Verizon advised that, if UNE orders are rejected under its policy, CLECs may request retail services pursuant to applicable tariffs.

Additionally, Verizon issued an internal advisory (see Attachment 3) in an effort to describe and clarify these situations to its employees. These activities were later summarized in another employee advisory issued November 13, 2001 (see Attachment 4). Verizon provides the following six reasons for employees to turn back CLEC DS-1 UNE loop orders for reasons of no facilities:

1. No available copper spares;
2. No apparatus/doubler case;
3. No central office or remote terminal repeater equipment;
4. No riser cable or buried drop;
5. No fiber or multiplexer; and
6. No capacity for the service requested on existing multiplexer.

The Staff believes that some of the six activities require capital investments and, therefore, conform to traditional definitions of construction. Some are routine maintenance activities and, therefore, should be expensed rather than capitalized. Verizon's use of the term "construct," however, encompasses all of these activities.

For example, placing new copper cable, placing a new apparatus/doubler case, and placing new multiplexers are capital expenditures and are, therefore, properly identified as construction. On the other hand, splicing existing cable pairs into an existing apparatus/doubler case and rearranging existing outside plant cable pairs are routine maintenance activities and should be expensed. There are idiosyncrasies, however.

For example, in the "no apparatus/doubler case" rejection category, DS-1 UNE orders can be rejected for "no facilities" even if one exists. In fact, the Staff investigated a complaint, prior to beginning its research in this proceeding, where Verizon had turned back a Cavalier DS-1 UNE loop request for the reason of "no apparatus/doubler case."[55] As it turns out, the apparatus/doubler case did, in fact, exist and was already in place. As the Staff understands it, all that was lacking to make the DS-1 facility appear in Verizon's inventory as assignable was routine maintenance (splicing) activity. The copper pairs existed, the apparatus/doubler case existed, but Verizon refused the request because of its no construction policy.

Interestingly, Verizon will purchase and install repeaters and other electronic equipment when they can be plugged into existing equipment that is already wired or spliced. Verizon will also install a smart jack at the customer premises. The purchase

[55] This was an informal complaint to the Division of Communications involving Dibert Valve and Fitting Company, Inc.

and installation of these items are considered a capital expenditure and, as such, a construction activity. From what we gathered, these activities are, in the scheme of things, relatively easy to perform, even though they constitute construction activities.

It is also worth noting that Verizon will perform no more than two line station transfers (moving a working line to a different cable pair) to provision a DS-1 UNE loop. Verizon will not, however, rearrange existing cable plant nor will it perform more than two line station transfers per DS-1 UNE loop order. Of note, Verizon will perform all of these activities to fulfill a DS-1 retail request.

In addition, Verizon stated that, while it would not assign a known defective cable pair to a DS-1 UNE request, if an assigned cable pair was found to be defective during the provisioning process, it would make an effort to remedy the defect. If the defect could not be remedied, then the DS-1 UNE loop request would be turned back for reasons of "no facilities."[56]

Verizon also claims that if there are engineering work orders scheduled and in progress, it will inform the CLEC that facilities may be available at a future date.

Effective December 23, 2002, Verizon revised its provisioning policy to allow CLECs, at their option, automatically to convert rejected DS-1 UNE loop orders to special access services (see Attachment 5). As noted earlier, however, this policy does not include the option of automatically reverting from a special access DS-1 to a DS-1 UNE loop as will be required in Maryland.

From a practical standpoint, however, there are no circumstances in which it will turn back a retail customer's request for DS-1 service for reasons of "no facilities." Even

[56] Based upon data provided by Verizon in response to Staff's Discovery Requests ("DRs") #10 & #21.

in cases where there are no facilities, Verizon will construct, rearrange, or otherwise provision DS-1 services to any requesting retail customer.[57]

According to Verizon's data, during the period between June 2001 and November 2002, Verizon rejected DS-1 UNE loops orders for "no facilities" at a rate of 19.4%.[58] Following is a breakdown of rejections, by rejection type, from January 2002 through November 2002:

Category	Quantity	% of Total Orders Rejected for No Facilities
No central office repeater	32	8.3%
No apparatus/doubler case	217	56.2%
No fiber or multiplexer	41	10.6%
No capacity for the service requested on existing multiplexer	14	3.6%
No riser or buried drop	6	1.6%
No available copper pairs	42	10.9%
Removal of load coils required (additional reason established during investigation)	17	4.4%
Uncategorized	17	4.4%
Total	386	100%

In the investigation of the aforementioned Broadslate and Alltel provisioning complaints, the Staff met with Verizon at one of its work centers to gain a better understanding of its UNE ordering, assignment, and provisioning processes. The work

[57] Verizon may charge for special construction of facilities.

[58] Based upon data provided by Verizon in response to Staff's DRs #2 & #3, 251 DS-1 UNE loops were requested and 631 DS-1 UNE loops were denied between June 2001 and November 2002.

center meeting focused on the service order flow from the time a CLEC or a retail customer places a request for DS-1 service until it is either processed or denied. Verizon drew a flow chart, which has since been updated by Verizon, to illustrate the various steps involved and the various decision points that might render a denial of a CLEC request for a DS-1 UNE loop because of a lack of facilities (see Attachment 6).

Even though different business units within Verizon accept retail and UNE orders, they enter the provisioning process as equals. From there, the orders are processed until provisioned, or, in the case of CLEC orders turned back for no facilities, denied. The flowchart shows that Verizon makes distinctions between retail orders and CLEC orders at various points during its provisioning process. These distinctions may result in the denial of DS-1 UNE loop requests for "no facilities." The issue here is whether or not the distinction is reasonable. In other words, as has been suggested by other parties, may Verizon refuse to construct, build, rearrange, or otherwise provision facilities for CLECs when it will otherwise do so for its retail customers?

Essentially, except as otherwise noted, if a CLEC requests a DS-1 UNE loop, and that request is rejected for no facilities, then the facility did not appear in Verizon's inventory as "currently available," which we understand to mean assignable. The capital (construction) items may be in place, but, if they do not appear in Verizon's assignable inventory, then the CLEC's request will be rejected.

Application of Verizon's Provisioning Policy

According to Cavalier, as well as the other intervenors, Verizon, in mid-2001, changed its provisioning policy and began to deny CLEC DS-1 UNE loop requests. As the Staff has now confirmed, CLECs did, in fact, experience a dramatic increase in the

number of DS-1 UNE loop request denials (a nearly 50% denial rate during June and July 2001). Prior to this period, DS-1 UNE loop requests were rarely, if ever, denied.

TELRIC Pricing Review

Economic Principles

The prices currently in use for the DS-1 UNE services at issue in this proceeding were set by the Commission in Case No. PUC-1997-00005. These prices were set by the Commission's order of April 15, 1999, based on the Commission's directions in its Order, dated May 22, 1998 (hereinafter, "5/98 Order"). The 5/98 Order established the methodology and many of the specific inputs into the price determinations of all the UNEs then available to CLECs, including DS-1 channels. The Staff reviewed the determinations of these prices because they comprise the many predictions of provisioning and operational methods necessary to complete the calculations of the prices.

The Commission established and completed Case 97-05 to carry out its responsibility to implement the costing and pricing method prescribed by the FCC and known as TELRIC, thereby fulfilling the requirements of the FCC's Rules at 47 C.F.R. §§ 51.505 and 51.511.

In Section B (Economic Principles and Selection of Economic Model) of the 5/98 Order, the Commission found that the "prices of interconnection and network elements should be based on their total, forward-looking, long-run incremental costs; that the application of these principles should reflect BA-VA's [Verizon's] existing wire center locations and the most efficient technology that can reasonably be employed in the immediate future; and that an appropriate allocation of shared costs and common

overhead costs, excluding retailing costs, should be included in these costs." The FCC had elaborated these principles in its First Report and Order[59] in the Local Competition proceeding, which resulted from the Act.

The FCC defined "incremental costs" as those that "... are the additional costs ... that a firm will incur as a result of expanding the output of a good or service by producing an additional quantity of the good or service."[60] The FCC defined "long run" as "a period long enough that all costs are treated as variable and avoidable. This long run approach ensures that rates recover not only the operating costs that vary in the short run, but also fixed investment costs that, while not variable in the short term, are necessary inputs directly attributable to providing the element."[61] These definitions are not empty words; they establish the fundamental principles with which the many specific decisions in study preparation had to comply, thereby forming the foundation upon which TELRIC studies were to be built. The Commission followed these principles in establishing, in its 5/98 Order, the study directions that led to the DS-1 prices currently in use for the DS-1 UNE services at issue in this proceeding.

The Commission's directions in its 5/98 Order specified the changes to be implemented in the studies submitted earlier by Verizon for determining UNE prices. Verizon implemented the Commission's directions and calculated the UNE prices that the Commission later prescribed in its April 15, 1999, order.

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[59] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, released August 8, 1996 ("Local Competition order").

[60] *Local Competition order* at ¶ 675. For this definition, the FCC credited *The Economics of Regulation* by Alfred E. Kahn, and *Toward Competition in Local Telephony 57* by William Baumol and Gregory Sidak.

[61] *Id.*, para. 692. The FCC credited Kahn, op. cit., for this definition.

Pertinent Features of Price Determination

Pertinent to this proceeding, the four most important features of the TELRIC studies, as defined by the FCC and prescribed by the Commission in setting DS-1 UNE prices, were the use of the following: (1) new capital, (2) forward-looking technology, (3) fill factors, and (4) maintenance factors that included rearrangement expenses. These features will be discussed in sequence below.

(1) New Capital

Since the TELRIC studies are incremental cost studies, as discussed above, they must include "... the additional costs ... that a firm *will incur* as a result of expanding the output of a good or service ...."[62] Since these studies determine the costs "that a firm will incur," they are naturally forward-looking studies. "Will incur" is in the future tense. Also, the cost of "expanding the output of a ... service" naturally means new capital. "Expanding" the output naturally means adding capacity that was not there before; hence, new capital is needed to add that capacity.

The demand forecast used in the Case 97-05 study of DS-1 UNEs predicted growth; i.e., an expanding output of this service. The data shows that units demanded were expected to grow by [redacted] in the first year, [redacted] in the second and third years, and [redacted] in the fourth year for a total compounded growth of xxxx in the four years after the initial study year.[63]

When new capital is included in a cost study, four elements of costs are necessary: depreciation, return, income taxes, and *ad valorem* taxes. Including these

[62] FN #60, above, emphasis added.

[63] Based on the response to Staff's DR #32 – CapCost+ input data under Tab 3.8.

elements in the cost, and therefore in the price, of UNEs ensures that Verizon will recover and earn on the new capital and recover the applicable taxes when UNEs are provided.

The Staff has examined the possibility that Verizon's no-construction policy might require a short-run cost analysis. TELRIC's long-run requirement might not be applicable under Verizon's current provisioning policy, in which it says it will do no new construction to provision DS-1 UNEs. It is reasonable to question whether including new capital in the DS-1 UNE price determination is appropriate under such a policy.

The Staff's analysis has concluded that new capital is still an appropriate part of a DS-1 UNE price determination, but not at the same level as the Case 97-05 study, which resulted in the prices currently in use. The key to our analysis is the effect of *causation* on the cost methodology. The question is, "What is *caused* by Verizon's refusal to add capacity to fill a CLEC order?"

When CLECs occupy capacity that could be used to fill orders for Verizon's customers, Verizon is *caused* to add capacity to fill those orders that Verizon would not have to add otherwise. Thus, Verizon could *avoid* placing that capacity were it not for the presence of the CLECs. The CLEC presence, therefore, causes capacity additions and new capital for DS-1 service.

The overall effect of this activity is to increase the level of "fill" at which Verizon operates. When CLEC orders arrive, they are filled only if a spare facility happens to be available, but rejected if there is no spare facility. This means that the fill of the capacity will, in the long run, run at a higher level than if Verizon added capacity any time a CLEC order caused the fill to go above the capacity relief point. The CLEC demand will

occupy more and more spare but never trigger an addition. This will result in a higher overall level of fill for the capacity needed for DS-1 services' demand. This applies to all CLECs, Cavalier and others, that are subjected to the no-build policy.

Below, under the sub-heading, "Fill Factors," we discuss the economic cost effect of spare investment loadings.

(2) Forward-looking Technology

The Case 97-05 study was properly based on forward-looking technology for provisioning DS-1 UNE loops. This technology was specified by Verizon and not altered in any way by the Commission's 5/98 Order, and Verizon witness Beard said, "[t]he studies reflect the cost of equipment and labor based on actual company practices."[64]

This technology specified provisioning DS-1 UNE loops on copper cable pairs, with added electronics, up to the "breakpoint" beyond which these loops would be provisioned on fiber-fed-remote-with-copper-distribution facilities, including electronics.[65] Mid-span doublers (or repeaters) were properly not part of the forward-looking technology. Doublers would not be required in this technology, because the use of fiber-fed remotes kept the copper distribution length always short enough so that doublers were not required. Use of doublers today, however, is irrelevant to the forward-looking TELRIC price determination of DS-1 UNEs.

In discussing TELRIC, the FCC prescribed that "[c]osts must be attributed on a cost-causative basis. Costs are causally-related [sic] to the network element being provided if the costs are incurred as a direct result of providing the network elements, or

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[64] Direct testimony of Elizabeth R. Beard, Exhibit 1, p.2, Case 97-05, filed April 23, 1997.

[65] Verizon response to Staff's DR #32.

can be avoided, in the long run, when the company ceases to provide them."[66] In a TELRIC study, therefore, the question is what is *caused* by providing DS-1 UNEs. And the costs of forward-looking technology are *caused* by providing DS-1 UNEs today.

The use of copper facilities with doubler cases, when necessary, is Verizon's own economic decision.[67] According to the Case 97-05 study, when utilization reaches the relief point, the forward-looking technology will be used to provide the relief. It is the cost, therefore, that is *caused* by today's utilization. If Verizon did not provide DS-1 UNEs, it could *avoid* installing that forward-looking technology to provide facility relief. There would be no need for relief, and service could continue to be provided on the sunk investment in existing facilities. So the direct link between what is provided today and what is caused by providing those services means that *causation* is present. Using today's sunk investment is irrelevant to determining the economic cost and price of DS-1 UNEs. Only what is caused and what can be avoided is relevant. And that is how, quite properly, the Case 97-05 study was done.

(3) Fill Factors

A fill factor is an input to a cost study that reflects the level of utilization that can be expected in the kind of capacity under study. It is widely recognized that telephone plant cannot be operated at 100% efficiency, that there will always be some level of spare capacity required to support the working services. The use of fill factors causes the cost of that spare capacity to be loaded onto the working capacity, the capacity being used to provision the service under study.

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[66] FCC's Local Competition Order, ¶ 691.

[67] Verizon's Outside Plant Engineering Guidelines (Document Number 1998-00397-OSP) state that the fiber solution is the preferred method of provisioning DS-1s.

The Case 97-05 cost/price determination for DS-1 UNEs properly reflected fill factors. The parties in that case disagreed about the appropriate level of "fill" to be reflected, but no one suggested that fill factors were inappropriate. To do so would be suggesting that Verizon could operate its network at 100% utilization – clearly impossible.

Verizon's witness Albert expressed the need for fill factors in his testimony:

> Engineering, managing and operating BA-VA [sic] network at such high [CLEC-proposed] utilization rates ... would have the effect of increasing the number of held service orders, thereby slowing repair and service restoration times, and increasing service provisioning intervals for all BA-VA service, including unbundled loops. Such a result would be unacceptable to this Commission, and to the CLECs.[68]

Later, in rebutting a Staff-suggested fill factor for DS-1 loops, he said:

> The Staff's basis for [its] recommendation – that BA-VA does not maintain an inventory of available DS-1 loops – is a misinterpretation of BA-VA's answer to Staff Interrogatory 28-1. In contrast to basic (POTS) loops – which are completely pre-assembled and available as inventory at specific customer locations in advance of a service request – DS-1 loops are not completely assembled. Verizon's response to Interrogatory 28-1 therefore means that Verizon does not maintain a pre-assembled inventory of DS-1 loops completely constructed from Verizon's central office to specific customer locations (like POTS loops). Verizon does, however, maintain inventories of the different digital electronic equipment components that are connected together to provision a DS-1 loop – when a specific customer order is received. The digital electronic equipment consists of: central office multiplexers, central office digital loop carrier systems, digital loop carrier plug-ins, remote (field) multiplexers, remote (field) digital loop carrier systems, and fiber optic electronics. The [redacted] utilization rate for digital electronics used in Verizon's DS-1 loop cost study therefore applies to this electronic component equipment inventory. Again, we adopted Verizon's proposed [redacted] fiber electronic utilization rate in the context of a POTS line, and the Commission should make the same finding with respect to DS-1 loops.[69]

[68] Rebuttal testimony of Donald E. Albert, p.5, Case 97-05, filed June 10, 1997.

[69] *Id.*, p. 16.

The Commission did make the finding Mr. Albert recommended.[70]

Today's prices for DS-1 UNE loops, therefore, cover the costs of the Commission-prescribed amount of spare investment to be carried by all the facilities – copper cable and electronics. The Staff has not undertaken the voluminous work necessary to calculate how much cost in the current prices can be attributed to spare investment loadings. But we have made an estimate that is sufficient for use in considering the economic cost effect of spare investment loadings.

The Staff used data provided by Verizon in response to Staff discovery request #32, which is the cost study done in Case 97-05 to determine the price of DS-1 UNE loops. We analyzed the elements of costs included in the Aberdeen wire center, the only one provided in response to DR #32. We calculated the spare investment loadings for all the components comprising the total forward-looking investment in DS-1 UNE loops provisioned in that wire center. Attachment 7 shows the calculation of our approximation. This is the percentage of today's DS-1 recurring price that is attributable to spare investment loadings.

The result was that 22.5% of the Aberdeen wire center DS-1 UNE loop costs were attributable to spare investment loadings. Since Aberdeen was a relatively dense wire center, even within Density Cell #1, we rounded up our estimate to 23%. We believe that less dense wire centers would contain a greater proportion of cable costs in the overall DS-1 UNE loop costs, so we consider our estimate of 23% to be somewhat conservative. We do not believe, however, that there would be large variations in the percentage of spare investment costs, so we would not expect a precise estimate to be far away from the

[70] The 5/98 Order, section D, item (4).

23%. We do not have a better estimate, but we believe this one is useful for consideration of the economic effect of spare investment loadings in this proceeding.

(4) Maintenance Factors Including Rearrangement Expenses

In the Case 97-05 studies, maintenance factors were used to calculate Verizon's forward-looking recurring costs of providing UNEs. These factors were determined as a function of investment, so they could be multiplied times a given UNE investment to produce the expected maintenance expenses attributable to that UNE. The Commission adopted the Staff-recommended maintenance factors.[71] The Staff determined its recommended maintenance factors based on data from Verizon, adjusted to reflect Staff's estimate of forward-looking conditions.

The Staff's recommended maintenance factors included significant amounts of expenses known by the code, "M." The other kind of maintenance expenses is known by the code "R." "The 'R' expenses for the capital accounts included in BA-VA's cost study reflect only repair costs for fixing the equipment in those capital accounts (e.g. metallic cables)."[72]

The "M" expenses reflect rearrangements[73] – such activities as "[i]nstalling, transferring, replacing and removing cross-connection wires ... transferring load coil cases ... entering and rearranging pairs in existing splices ... replacing outside cable terminals of 100 pair capacity or less not due to trouble."[74] The expenses for such activities are distinguished in Verizon's accounting system because they are different

[71] *Id.*, section C, item (6).

[72] Rebuttal testimony of Donald E. Albert, p.64, Case 97-05, filed June 10, 1997.

[73] Verizon response to Staff's DR #43(a).

[74] Verizon response to Staff's DR #43(c), received January 29, 2003.

from "R" expenses, and we found this distinction valuable in using the accounting data for a forward-looking estimate of maintenance expenses. The multi-page Attachment 8 shows the data we used to calculate its forward-looking estimate of maintenance factors that the Commission accepted for use in the DS-1 UNE cost/price determination in Case 97-05. The Staff believed, and still believes, that including "M" expenses is a correct method of estimating forward-looking maintenance expenses. For example, we agreed with Verizon witness Albert that "... spare capacity must be available throughout a feeder route to meet demand. If spare pairs are not available at a particular location, then BA-VA will have to rearrange or move around spares from another location (in groups of 25 pairs), which delays service and increases BA-VA'S operating costs."[75] We believe that rearranging cable pairs has been a routine, albeit undesirable, part of operating Verizon's local network for a long time. We believe it is impossible always to have the necessary cable pairs available at the specific location where they are needed to fill a customer's order. We are not surprised that Verizon encounters situations in which rearrangements are necessary to fill orders for DS-1 UNE services.

Including rearrangements and changes in the DS-1 UNE maintenance expenses can reasonably be said to mean that CLECs are currently paying some amount for such activities in the current recurring prices of DS-1 UNEs, given that they are a routine part of local network management. The Staff has not undertaken the voluminous work necessary to calculate that amount, but we have made an approximation of how much of today's recurring price of DS-1 UNEs is attributable to rearrangement expenses.

[75] *Id.*, p. 10.

Since the Commission adopted the Staff-recommended recurring maintenance expense factors in Case 97-05, with a minor adjustment that does not affect DS-1 costs, we had the data necessary to begin the calculation of our approximation. We calculated the proportions of our factors attributable to "M," or rearrangements and changes, that were built into our Case 97-05 recommended factor. Using the data provided by Verizon in response to Staff DR #32, we determined for the Aberdeen wire center the amount of maintenance expenses attributable to rearrangements and changes. Attachment 9 shows our calculations.

We determined that 3.8% of the DS-1 UNE loop costs in the Aberdeen wire center were attributable to "M" expenses. Since less dense wire centers should contain a greater proportion of cable costs, we will round up our approximation to 4%, and we believe this figure would be conservative as a statewide approximation. It is by no means a precise estimate, but we believe it is useful in this proceeding for considering the DS-1 UNE price effect attributable to cable rearrangements and changes.

Non-recurring expenses are also incurred by Verizon in provisioning DS-1 UNE loops. The Staff examined the Case 97-05 study[76] that was done to determine, among other things, the non-recurring charges for provisioning DS-1 UNE loops. We examined this study to establish that no recurring kinds of expenses are included. We found that the following activities were included[77]:

- Service order expenses
- Circuit provisioning center design and assignment work

[76] Verizon response to Staff's DR #32.

[77] Summarized from Verizon responses to Staff's DRs #41 & #42.

- Line Transfer
- Contacting central office frame technician
- C.O. frame work
- Making a field test of the facility
- Making a cross-connect in the field
- Coordination with the CLEC
- Record keeping on the customer's premises
- Closing out the service order

These are what might be called standard activities necessary to provision UNE loops, such as DS-1s. They are not included in the recurring maintenance expenses discussed above and, for that reason, they go into determining the non-recurring charges associated with provisioning DS-1 UNE loops. Likewise, the recurring repair and rearrangement expenses are kept out of the determination of these non-recurring charges. We have found no gap or overlap between the recurring rates and non-recurring charges for DS-1 UNE loops.

Special Access Substitution

When an order for a DS-1 UNE is rejected for no facilities, CLECs may place an order for a DS-1 retail service. Verizon will then make facilities available and fill the order. When CLECs choose to place such an order, they place it under Tariff F.C.C. No. 1, as a high-capacity special access service. CLECs would be permitted to place such an order under Verizon's Tariff S.C.C.-Va.-No. 217 ("Tariff 217"), as intrastate special access, or under Verizon's Tariff S.C.C.-Va.-No. 204 ("Tariff 204"), as an intrastate channel service, but they generally choose the interstate special access tariff. Attachment

10 shows a comparison of rates available from these three sources, along with the DS-1 UNE prices.

The CLEC parties' comments in this case, particularly those of AT&T[78] and NTELOS[79], contain detailed explanations of the process used to obtain a special access DS-1 service to substitute for the UNE they originally wanted.

When Verizon rejects a DS-1 UNE order for no facilities, Verizon now offers to convert that order automatically to a request for interstate special access. The same communications channel facility would be provided to the CLEC, but under the prices in the interstate special access tariff. This would mean, effectively, a rate increase for DS-1 UNEs. The CLEC would receive merely what it wanted in the first place, plus the "trouble isolations"[80] function applicable only to the recurring rate, but at prices significantly higher than DS-1 UNE prices.

Effect on Competition and Consumers

The Staff found that there are two major competitive market effects of having DS-1 UNE orders rejected for lack of facilities: customers, both wholesale and end users, are delayed in getting the services they want, and costs, in the form of operational costs and foregone revenue, are increased for both Verizon and CLECs. In their comments filed December 9, 2002, CLECs provided discussions of customer and cost effects. NTELOS, in particular, provided a pertinent discussion of the cost and revenue effect of substituting Tariff F.C.C. No. 1 special access for rejected DS-1 UNE services.[81] We discuss market

[78] AT&T Comments, filed December 9, 2002, beginning at p.5.

[79] Comments of NTELOS Network Inc. and R&B Network Inc., filed December 9, 2002.

[80] Verizon Reply Comments, filed December 30, 2002, at pp.3-4.

[81] Comments of NTELOS Network Inc. and R&B Network Inc., filed December 9, 2002, beginning at p.3.

and customer effects below, but first, we shall discuss the size and shape of the DS-1 market to form a context in which to consider economic effects.

The Staff gathered information to permit a rough quantification of the DS-1 market and the effects of Verizon's no-build policy. Again we did not undertake the voluminous work necessary for precision; we believe the ballpark estimates[82] discussed below are sufficient to inform the Commission of the potential economic effects of Verizon's current provisioning practices. We ignored optional features and channel mileage that are available on retail DS-1s because of the extra data required, and they are generally not involved in DS-1 UNEs.

The Staff estimated the overall size of the DS-1 market to Verizon. This was done by estimating the total revenue Verizon receives from all kinds of DS-1 services it provides: UNEs, Tariff 204, Tariff 217, and Tariff F.C.C. No. 1. From all sources of DS-1 revenue, Verizon's revenue potential was about [redacted] in 2001 and [redacted] in 2002. These values assume, however, that all DS-1 UNE loop orders were completed. Since we know that some DS-1 UNE orders were converted to Tariff F.C.C. No. 1 special access orders, and we ignored optional features and channel mileage, these estimates are somewhat conservative.

Of Verizon's overall DS-1 market revenues, we estimated the total amount attributable to DS-1 UNEs. We found Verizon's potential DS-1 UNE revenue to be about [redacted] in 2001 and [redacted] in 2002, again assuming all DS-1 UNE orders were completed. This means that in 2001, DS-1 UNEs generated [redacted] of the total

[82] These estimates are based on data received from VZ in response to Staff s DRs #2 through #9 & #16; VZ Tariffs S.C.C.-Va-204, S.C.C.-Va.-217, F.C.C. No. 1, Cavalier Virginia S.C.C. Tariff No. 1; and the Staff's informed judgment.

of all Verizon DS-1 revenue. In 2002, DS-1 UNEs generated [redacted] of total Verizon DS-1 revenue. By far the largest portion of DS-1 revenues comes from interstate, F.C.C. No. 1, special access services. In 2001 and 2002, it produced [redacted] of DS-1 services' revenues.

If all DS-1 UNEs were provided as Tariff F.C.C. No. 1 special access, Verizon's potential revenue from that source would have been about [redacted] in 2001 and [redacted] in 2002. This means that eliminating all DS-1 UNEs and replacing them with Tariff F.C.C. No. 1 special access services would have increased VZ's DS-1 revenues in 2001 by [redacted] and in 2002 by [redacted].

Of all the DS-1 loops ordered from Verizon in 2001, [redacted] of them were UNEs. In 2002, [redacted] of them were UNEs. Of the total DS-1 loops in service, UNEs were [redacted] in 2001 and [redacted] in 2002. Within the overall market for DS-1 services, UNEs show the highest percentage growth, from 2001 to 2002, even though the quantity of Tariff F.C.C. No. 1 special access DS-1s added in 2002 was higher. The rough average of DS-1 UNEs in service increased by [redacted] from 2001 to 2002, while Tariff F.C.C. No. 1 special access DS-1s increased by [redacted] from 2001 to 2002. The total percent of loops in service for Tariff F.C.C. No. 1 special access loops was [redacted] in 2001 and [redacted] in 2002, reflecting the higher rates for these special access loops, since [redacted] of the revenue is attributable to them in both years.

We analyzed the activity in DS-1 UNE requests from Cavalier in 10-11 months of 2002. We found that Cavalier requested [redacted] loops, had [redacted] provided as UNEs, and had [redacted] loops provided under Tariff F.C.C. No. 1 special access. Cavalier, therefore, had [redacted] loops ([redacted]), with a voice-grade equivalent of [redacted] lines, never provided, assuming all unfilled UNE requests were re-submitted as special access. We

made a rough estimate of the revenue potential to Cavalier of these lost loops. By assuming Cavalier uses all DS-1 UNEs for voice-grade services at a fill of 18 channels per DS-1, half business lines and half trunks, Cavalier's lost annual revenue potential for the [redacted] loops was [redacted], ignoring vertical services and switched access revenues. Both Cavalier and Verizon experienced the extra costs of the substitute special access order processing, and both Cavalier and Verizon lost some revenue during the delay in processing the substitute order. Presumably during such delays, customers could have been paying Cavalier for services, and Cavalier could have been paying Verizon for UNEs or special access.

To address the customer effect of Verizon's DS-1 provisioning policy and using similar assumptions as above, we analyzed DS-1 UNE requests (orders), instead of loops. The Staff found Cavalier submitted [redacted] requests during 11 months of 2002 and had [redacted] completed as UNEs. There were, therefore, [redacted] requests ([redacted]) either converted to special access or never filled. Assuming each request represents a customer, potentially [redacted] Cavalier customers experienced some amount of disruption and delay in getting the communications services they wanted – or never got it at all. Realizing that some of these unfilled orders might have been withdrawn by Cavalier or the customer, for their own reasons, we observed that during January through May of 2001, prior to Verizon's apparent provisioning policy change, [redacted] of DS-1 UNE requests from Virginia CLECs were completed. So one could assume that CLECs and customers withdraw [redacted] of DS-1 UNE orders. Again, these are admittedly rough estimates, but should be sufficient to get an idea of the magnitude of the problem being addressed in this proceeding. The Staff did not collect sufficient data to make a similar analysis of

requests for the CLEC DS-1 UNE market in total. We observed, however, that in 2002, Cavalier submitted [redacted] of all the DS-1 UNE requests from CLECs in Virginia.

STAFF'S FINDINGS

Based on the Staff's investigation, we have found the following:

Finding 1

The Staff finds that Verizon's DS-1 UNE loop provisioning policy, as a practical matter, changed in mid-2001. Verizon asserts that its provisioning policy did not change. However, in order properly to apply its policy, Verizon engaged in an employee education program and sent letters to CLECs stating its policy. Immediately following these activities, rejected DS-1 UNE orders, formerly a rarity, increased to levels approaching 50%. As such, the Staff believes that Verizon's mid-2001 activities regarding its DS-1 UNE loop provisioning practices were tantamount to a change in policy. Whether or not the policy, in fact, changed, however, was not central to the Staff's investigation.

Finding 2

According to Verizon, it is not obligated to construct new UNEs where facilities are not already available for Verizon's use in providing service to both its wholesale and retail customers. As the Staff learned, however, Verizon includes as new construction the rearrangement of existing plant. The Staff finds that Verizon has altered the meaning of the term "construct" in the application of its DS-1 UNE loop provisioning policy.

Finding 3

The Staff finds that Verizon's DS-1 UNE loop provisioning policy is in conflict with the implicit assumptions underlying the determination of TELRIC prices. Those

assumptions included the construction of new plant and the rearrangement of existing plant.

Finding 4

The Staff finds that customers and carriers are harmed by Verizon's DS-1 UNE loop provisioning policy. Customers are delayed in getting the services they want, and additional costs are incurred by both Verizon and the CLECs.

Finding 5

The Staff finds that when a CLEC orders special access DS-1 service, as a result of Verizon's UNE provisioning policy, it is effectively a rate increase from the CLEC's point of view. In this situation, the CLEC merely accomplishes what it set out to do with its DS-1 UNE loop request, but at significantly higher rates.

POSSIBLE REMEDIES

The Commission may consider directing Verizon to provision DS-1 UNE loops according to the implicit assumptions of TELRIC. This would include constructing new plant and rearranging existing plant to fulfill DS-1 UNE loop requests.

Alternatively, the Commission may decide that Verizon is obligated only to rearrange existing plant and not to construct new plant to fulfill DS-1 UNE loop requests. Under this alternative, the Commission should consider a re-determination of DS-1 UNE loop TELRIC prices incorporating an appropriate treatment of spare investment loadings and any other needed adjustments.

The Commission may consider setting intrastate special access rates at TELRIC levels, as suggested by AT&T.

The Commission may consider, as a temporary measure, enjoining Verizon's current DS-1 UNE loop provisioning policy and directing Verizon to revert to its practices as used prior to May 2001, as suggested by Covad.

The Commission, if it decides that Verizon's DS-1 UNE loop provisioning practices are reasonable, may consider directing Verizon to streamline its provisioning practices so that CLECs and their customers are not unduly delayed in obtaining services.

This concludes the Staff's report.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

REPORT OF
DIVISION OF COMMUNICATIONS

IN

CASE NO. PUC-2002-00088

ATTACHMENT 1

STATE OF MARYLAND PSC
DECEMBER 16, 2002
LETTER TO VERIZON

(11 PAGES)

December 16, 2002

Mr. William R. Roberts
President
Verizon Maryland Inc.
Floor 8-E
1 East Pratt Street
Baltimore, Maryland 21202

Re: In the Matter of the Review By the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. §271(c), Case No. 8921

Dear Mr. Roberts:

On April 12, 2002, Verizon Maryland Inc. ("Verizon") filed its request in Maryland for the Maryland Public Service Commission ("Commission") to consider the facts regarding Verizon's decision to enter the long distance market via a §271 application at the Federal Communications Commission ("FCC"). This request followed two years of testing of Verizon's wholesale operations support systems ("OSS") in Virginia and related corrective actions to those systems. The April 12th filing also reflected the fact that Verizon had requested the Maryland Public Service Commission to refrain from implementing Maryland specific OSS testing and await the outcome of the Virginia test results.[1]

The Maryland Commission's agreement with the above request ensured that any §271 consideration here would of necessity follow Virginia's consideration as our anchor state, Verizon Virginia's application to the FCC and FCC approval. Thus, this process ensured, as well, that Maryland would be one of the last Verizon states to consider a §271 application. The FCC has permitted applicants for §271 authority to rely upon OSS evidence from another state, referred to as the anchor state, provided the FCC has already approved the anchor state's §271 Application, or is given the opportunity to review the anchor state's OSS simultaneously, such as in a multi-state filing.

During the past several months, the Maryland Commission has conducted a detailed examination to determine the status of Verizon's compliance with §271(c) of the

[1] Maryland agreed to do so based upon Verizon's assertion that the Maryland and Virginia wholesale OSS are comparable, and in so doing would avoid duplicative testing and unnecessary cost to Verizon. Other parties disagreed with this position.

Telecommunications Act of 1996 ("1996 Act"). 47 U.S.C. §271(c). In the course of this examination, the Commission received into evidence thousands of pages of documents regarding checklist compliance, testing, validation, the Virginia consultative report, transcripts from the Virginia proceeding and other issues, as well as testimony and briefs from the parties, including several competitive local exchange carriers ("CLECs") and the Office of People's Counsel. The Commission conducted five days of evidentiary hearings from October 28 through November 1, 2002. In addition, on November 4, 2002 the Commission heard live surrebuttal regarding the FCC's October 30, 2002 approval of the Verizon Virginia §271 application. Since Virginia was the anchor state for OSS testing for Maryland, the Maryland Commission was unable to act prior to such approval being received. Now with the FCC approval of Virginia's OSS having been granted, the hearings in this proceeding concluded, over 200 pages of post-hearing briefs received and a transcript in excess of 1700 pages reviewed, this Commission can now complete its expeditious review of this matter.

This Commission has a long history of fostering competition in the local market. At one time, Maryland was considered a national leader in the opening of telecommunications' markets to competition. Today, this Commission is greatly concerned about the State of Maryland's inability to build upon the initial gains achieved in opening the local market to competition and the apparent sluggish nature of local competition growth.

Maryland began opening the local telephone service market to competition in 1994. In *Re MFS Intelenet of Maryland, Inc.*, 85 Md. PSC 38 (April 25, 1994), this Commission granted MFS authority to provide telephone services in Maryland, approved the unbundling of links and ports and required Verizon (then Bell Atlantic-Maryland, Inc.) to provide for interconnection with MFS. In Phase II of that proceeding, the Commission set the rates, terms and conditions for interconnection between the carriers. *Re MFS Intelenet of Maryland, Inc. Phase II*, 86 Md. PSC 467 (Dec. 28, 1995).

The passage of the 1996 Act interrupted Maryland's course of action as it imposed new duties and new processes on state agencies with regulatory responsibilities over telecommunications carriers. Enactment of the 1996 Act required the Commission to reexamine previously resolved issues to ensure compliance with new FCC directives. Further, the new process removed this Commission's autonomy and forced the Commission to constantly revise its vision of how competition can and should be achieved in Maryland to reflect federal regulatory and judicial decisions.

The State of Maryland is no longer a national leader in telecommunications competition. To the contrary, according to the FCC Report on the status of local competition in the nation referenced in the record of this proceeding, CLECs in Maryland serve 4% of the end-user switched access lines, while the national figure is 10%.[2] Indeed, as of December 2001, the level of competition in Maryland had receded by a third from 6% to 4% and appeared to be regressing, joining South Carolina and Mississippi. Such a condition is not

[2] On December 9, 2002, following the conclusion of the hearings in this proceeding, the FCC issued an updated report on the status of local competition which updated the number of end-user switched access lines served by CLECs in Maryland to 6% and 11% nationally as of June 2002.

acceptable in Maryland after 8 years of effort. This situation no doubt results from federal actions but also from various Verizon operational issues, CLEC issues – financial and otherwise, and this Commission's delay in resolving our recent proceeding into the rates Verizon charges for wholesale unbundled network elements in Maryland.

Thus, Commission's consideration of the record developed in this proceeding shows the obvious need to improve the local competitive environment in Maryland. In order to ensure that local competition is sustainable into the future, the Commission directs Verizon to implement the requirements discussed below. The Commission finds that subject to Verizon complying with the conditions identified below, Verizon is technically in compliance with the §271 checklist as defined by the FCC. Furthermore, the Commission notes a number of concerns that must be addressed before the Commission can say that Verizon's entry into the Maryland long distance market is in the public interest. The Commission hereby conditions its recommendation to the FCC that Verizon's entry into the long distance market is in the public interest on Verizon addressing the concerns listed below in the manner ordered by the Commission.

1. Verizon's No Build Policy

This issue involves Verizon's provisioning of high capacity unbundled local loops. Several parties to this proceeding argued that Verizon improperly rejects CLEC orders for high capacity loops[3] when Verizon claims no facilities are available and construction is required, (hereinafter referred to as Verizon's "no build" policy). Based on the evidence in this case, the Commission believes that the impact of Verizon's "no build" policy pertaining to the availability of DS-1 and DS-3 facilities for use by CLECs creates a barrier to local competition in Maryland.

Verizon contends that its policy is based on a decision of the United States Court of Appeals for the Eighth Circuit holding that unbundling only applies to the incumbent local exchange carrier's ("ILEC") existing network. Verizon also notes that the FCC is considering whether to modify these rules. Finally, Verizon claims that CLECs can cause Verizon to build new facilities if CLECs order them as special access facilities and pay the minimum term of two months' worth of charges for special access DS-1s and one year's worth of charges for DS-3s before converting them to UNEs. The CLECs contend that Verizon's policy results in new facilities costing CLECs more than if these facilities were provisioned at UNE rates.

The Commission does not dispute the effect of the Eighth Circuit decision, and the Commission is cognizant of the fact that the FCC has previously found that similar Verizon policies in other states do not violate the competitive checklist. In this proceeding, however, the evidence supports the claim that Verizon's policy has the effect of increasing CLEC costs and provisioning intervals which delay the CLECs provision of service to the end user, and as such creates a barrier to competition. The record suggests that a number of CLECs are

[3] E.g., DS-1 and DS-3 loops or other high capacity facilities, including interoffice facilities or entrance facilities.

unaware that the special access facilities which are ordered because of the lack of available facilities may be converted to UNEs after two months for DS-1s and one year for DS-3s. This conversion policy enables the CLECs to have access to the high capacity facility without the excessive cost of maintaining the facility at the higher special access rates indefinitely.

Therefore, as a temporary measure, the Commission finds that if a CLEC orders a DS-1 as a UNE with a request for automatic conversion, and Verizon does not provision it because of lack of facilities, Verizon shall convert the UNE order to a special access order and then convert the newly-built special access facility to a UNE automatically after the tariffed time has elapsed. This automatic conversion will only occur in those situations where the CLEC originally requested UNE facilities, and this request was denied by Verizon. Moreover, the FCC rules and limitations on converting special access to UNEs shall be followed for each conversion. Verizon shall put this revised ordering arrangement in place within four months.

The Commission's concerns pertaining to the effect of Verizon's "no build" policy on competition have been echoed in other Verizon jurisdictions, including Virginia. There, the Virginia State Corporation Commission ("VSCC") has instituted a proceeding to consider this issue, and the practice is also under consideration in the FCC's Triennial Review. This Commission will actively monitor both proceedings and upon their conclusion take further action as may be necessary.

Finally, the Commission is concerned about the limited amount of information Verizon provides a CLEC when no facilities are available. Verizon is directed to identify to the CLEC the reason for each no facilities finding.

2. Dark Fiber

Dark fiber, analogous to unused copper loop or transport facilities, is fiber that is in place but has not been activated through the connection of the electronics/photonics to carry communications services. Dark fiber is useful to local exchange carriers in a variety of ways including the provision of advanced services or services offered over high bandwidth. Dark fiber can also be cost effective and can result in economies of scale being achieved by CLECs. In accordance with the FCC's rules and regulations, ILECs must make dark fiber available to CLECs pursuant to section 251(c)(3) of the Act. The Commission believes that the record in this case suggests the lack of accessible information from Verizon to CLECs prevents CLECs from identifying and locating existing dark fiber within Verizon's Maryland network. Further, it appears that the CLEC's inability to reserve or order dark fiber while a request for collocation arrangement is pending creates an additional barrier to the development of local competition in Maryland.

According to Verizon, the FCC addressed the second issue noted above in its recent Virginia Consolidated Arbitration Order. As a result, Verizon is now required in Virginia to permit CLECs to order the desired dark fiber ten business days after the CLEC requests a collocation arrangement. The Commission hereby directs Verizon to implement this policy in

Maryland. Thus, CLECs will be permitted to order dark fiber and collocation arrangements in this manner. The Commission believes that this new requirement will advance the development of competition for advanced services in Maryland, such as high speed data access.

With regard to the issue of whether Verizon provides adequate information to CLECs so that they might locate dark fiber, Verizon contends that the Company has improved this process by providing alternative routing to a requesting CLEC. While this change is a step in the right direction, it represents only a minimal improvement at best. The Commission hereby directs Verizon to continue to provide this alternative routing. Furthermore, the Commission directs Verizon to provide to a CLEC upon request, central office and all related termination points for all fiber facilities for any office or group of offices at which the CLEC is considering ordering dark fiber. This will enable CLECs to have access to more accurate information pertaining to the availability of dark fiber on routes where fiber is actually installed and will operate to remove a barrier to competition by improving access to UNEs and the quality of information available to CLECs.

3. Geographically Relevant Interconnection Points ("GRIPS")

Verizon has entered as evidence in this proceeding a Model Interconnection Agreement containing terms which require CLECs to establish with Verizon one or more GRIPs or virtual geographically relevant interconnection points ("VGRIPs") at designated or agreed upon points within each Local Access and Transport Area ("LATA") of Verizon's network. This Commission previously considered this proposal in Case No. 8887, the Sprint Communications Co., L.P./Verizon Arbitration, wherein the Commission rejected Verizon's GRIP/VGRIP proposals. The proposed language in the Model Interconnection Agreement is substantially the same as the language proposed by Verizon during the Sprint Arbitration as well as the language rejected by the FCC in the Virginia Consolidated Arbitration. This Commission's position on this issue remains unchanged. The Commission does not accept Verizon's GRIPs or VGRIPs proposals.

According to Verizon, its Model Interconnection Agreement has been modified to reflect the results of the FCC's Virginia Consolidated Arbitration Order. However, the Model Interconnection Agreement, which was dated prior to the issuance of the Virginia Consolidated Arbitration Order, was submitted as evidence in this proceeding. It does not reflect that change. The Commission hereby directs that Verizon shall not include GRIPs or VGRIPs provisions in any Model Interconnection Agreement in use in Maryland unless expressly authorized by this Commission or the FCC.

4. Billing

The Virginia State Corporation Commission's testing of Verizon Virginia's OSS did not separately test the accuracy of the Billing Output Specification/Bill Data Tape ("BOS/BDT") electronic billing system used by Verizon to generate bills for some CLECs. The evidence in this proceeding demonstrates the importance of having a means of ensuring

that Verizon provides CLECs with timely and accurate paper and electronic bills. The Commission notes that the negative effects of incorrect billings falls more heavily on CLECs in a developing competitive market. The updated version of the Maryland Carrier-to-Carrier Guidelines, which enforces Verizon's performance, will become effective January 2003. They include metrics to measure important aspects of the billing process. These metrics require 95% of all billing claims to be acknowledged within two business days and also require that 95% of these billing claims be resolved within 28 days after acknowledgement.

This Commission has concerns that, under the stress of high commercial volumes electronic billing may experience unanticipated difficulties. Therefore, in order for this Commission to monitor whether Verizon's electronic billing is working successfully under commercial applications and volumes, the Commission directs Verizon to alter the report dimensions to include CLEC aggregate, CLEC specific, Verizon affiliate aggregate and Verizon affiliate specific information on the billing metrics. Furthermore, the Commission directs the Maryland Carrier-to-Carrier Collaborative ("Collaborative") to examine whether different metrics adopted in New Jersey or other jurisdictions are appropriate for use in Maryland.

5. Entrance Facilities

Verizon Maryland is required by the 1996 Act and the FCC to provide interconnection using all technically feasible means, including loop facilities. Verizon indicates that it will provide the types of interconnection such as that requested by Core Communications subject to appropriate amendments to the parties' interconnection agreement. According to Verizon, Core and some other CLECs are requesting a lesser form of interconnection which is not usually included in the interconnection agreements. The CLECs contend that this form of interconnection is necessary due to cost and provisioning time considerations. However, the Commission is pleased to note Verizon's willingness in Salisbury, Maryland to modify their previous policy by agreeing to interconnect with Core using its existing retail facilities in shared arrangement. This appears to remove a barrier to competition.

The FCC, in its interpretation of §251(c)(2), requires ILECs to provide interconnection that is "at least" equal in quality to that enjoyed by the ILEC itself. The FCC also requires ILECs to provide interconnection arrangements when the request is technically feasible, subject to the terms of the parties' interconnection agreements. The Commission finds that it is technically feasible in some instances for Verizon to provide entrance facility interconnection to requesting carriers over loop facilities that are shared with Verizon's retail customers, rather than over conventional interoffice facilities.

Furthermore, Verizon shall be required to provide entrance facilities to requesting CLECs over existing loop facilities that are shared with Verizon's retail customers when capacity exists. The fact that a CLEC has requested the shared facilities demonstrates that the CLEC is willing to accept a lesser quality form of interconnection, and the performance limitations that such lesser quality interconnection may entail. In order to accommodate CLECs seeking this form of interconnection, Verizon is directed to provide within thirty (30)

days of accepting the conditions in this letter, a Model Interconnection Agreement amendment that can be adopted by CLECs seeking this form of interconnection with Verizon. This amendment shall be filed with and must be approved by the Commission. In addition, the Collaborative shall consider the issue of what metrics and PAP will apply in this situation. The Commission intends to monitor Verizon's provision of these facilities while the Collaborative is considering this issue.

The Commission is aware that many issues pertaining to interconnection trunking over loop facilities are under consideration in a separate Commission proceeding, Case No. 8881. The Commission believes that this proceeding will resolve the majority of the issues pertaining to this aspect of entrance facilities, and determine if any barriers to competition exist.

6. Enhanced Extend Loops

An Enhanced Extended Loop ("EEL") consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The record in this proceeding suggests that Verizon's requirement that CLECs order the component parts of EELs in a sequential, rather than a coordinated, manner requires CLECs to pay for facilities before they are assembled in useful form. Thus, the process by which Verizon requires CLECs to order EELs creates unwarranted delay and additional costs.

Evidence presented in this proceeding demonstrates that a different ordering process currently is being used in Massachusetts. The Commission hereby requires that Verizon adopt in Maryland the tariffed Massachusetts EEL ordering and billing process. In order to accommodate CLECs seeking EELs, Verizon is directed to provide to the Commission, within thirty (30) days of accepting the condition in this letter, a Model Interconnection Agreement amendment that can be adopted by any CLEC seeking this form of UNE. This amendment shall be filed with and must be approved by the Commission.

7. Line Sharing

Line sharing occurs when an incumbent is providing, and continues to provide, voice service on a particular loop to which a CLEC provides or seeks access in order to provide xDSL service. According to the evidence presented, where an end user formerly was provided voice and data services by Verizon and chooses to receive its voice services from a CLEC, the end user will lose its data or DSL services from Verizon. The Commission is extremely concerned about this potential side effect on a consumer's decision to engage in choice – that is that the customer has to weigh its desire to maintain its DSL service against its decision to select a competitive local exchange provider. The Commission is pleased that Verizon has indicated that it is willing to enter into technical and business discussions with CLECs to attempt to arrange the relationships necessary to make such a consumer decision unnecessary. Such an offer addresses the Commission's public interest concerns pertaining to this issue. The Commission directs that Verizon make the offer available to all CLECs.

8. Metrics Replication

The Commission recognizes the need to ensure that Verizon's performance in providing service to CLECs continues and improves after Verizon enters the long distance market in Maryland. For this reason, the Commission approved both the Carrier-to-Carrier Guidelines and the Performance Assurance Plan ("PAP"). The Commission relies upon Verizon to provide the metrics reports that measure Verizon's performance and trigger the payments applicable under the PAP.

In order to better ensure the accuracy of these reports, Verizon is directed to file exception reports refiling those metrics found to be in error. The metrics are to be corrected where the discovered error has an effect on the aggregate calculation of PAP remedies in excess of $1,000. This refiling shall occur in any instance where an error has been noted and corrected, regardless of what party discovers the error. After six months experience, the Commission will evaluate the need to continue this refiling requirement.

Furthermore, an ability to replicate the metrics reports provided by Verizon will allow the Commission to verify the accuracy of the metrics measuring Verizon's performance. The Commission shall require that Verizon, upon request of the Commission, hire a consultant who shall report directly to the Commission and shall train the Commission Staff on how to set up Maryland Performance Metrics replication. After the consultant is hired, Verizon shall provide Staff access to the Metrics Hotline to answer questions that may arise concerning the complementation of the Guidelines and shall cooperate with Staff to provide the data required to allow Staff to conduct replication as necessary to confirm the accuracy of Verizon's performance reports.

9. Directory Listing and Related Charges

The Virginia State Corporation Commission's OSS test did not include a meaningful examination of the accuracy of directory listings. The Commission is concerned that directory errors, both white and yellow pages, cause disruption to CLECs disproportionately. Thus, this Commission will be carefully monitoring directory listing errors, and will, if necessary, institute a special proceeding to address any concerns.

Further, testimony in this proceeding indicates that Verizon encourages CLECs to use the Directory Listing Inquiry pre-order query in order to ensure the accuracy of White Pages Listings. Verizon expressly stated that the Company currently does not charge for this inquiry. However, Verizon's Model Interconnection Agreement includes a charge for pre-order queries that includes the Directory Listing Inquiry. Since Verizon does not charge for this inquiry in Maryland, Verizon is hereby directed to amend its Model Interconnection Agreement used in Maryland within thirty (30) days of accepting the condition in this letter to indicate that no charges apply. Furthermore, Verizon is hereby prohibited from instituting such a charge unless the Company first obtains the approval of this Commission.

10. Unbundled Network Element ("UNE") Pricing

The record in this proceeding supports a finding that establishing an appropriate level of UNE rates, in particular UNE-P, is essential in encouraging competitive entry into the Maryland market. In Case No. 8879, the Commission currently is completing a comprehensive resetting of UNE rates. The Commission intends to complete that case and issue a final order soon.

The Commission concludes that permitting Verizon to continue charging the currently effective UNE rates will not adequately promote full-scale market entry in Maryland. The Commission is particularly concerned about the loop rate and the unbundled switching rate. Accordingly, Verizon is directed to reduce these rates in the manner described below.

With regard to the UNE loop rate, the Commission requires Verizon to agree to reduce this rate from the current statewide average of $14.50 to a statewide average of $12.00. Additionally, Verizon is required to reduce its end-office per minute-of-use switching element 56% from $0.003800 per minute to $0.001676 per minute. Finally, for the other rates previously instituted in Case No. 8731, Phase II, Verizon is directed to adopt an interim rate-setting approach similar to that the Company employed and the FCC approved in Verizon Virginia's § 271 filing. The Commission directs Verizon to file a list of these rates with the Commission at the same time that the Company accepts this condition.

Moreover, the Commission also requires that Verizon commit to make the rates adopted in Case No. 8879 retroactive to the effective date of the reduced rates discussed above. The effective date of these reduced rates shall be within five days of the date of this letter.

Finally, in the event that the Order issued in Case No. 8879 is subsequently overturned an appeal, Verizon shall commit to reinstituting the rates set forth above until such time as the Commission reconsiders the decision rendered in Case No. 8879 to the extent required by the Court.

11. Additional Policy Concerns

In addition to the conditions contained in numbered paragraphs 1 through 10 of this letter to which Verizon must respond, the Commission also has several policy concerns pertaining to competition within the State of Maryland.

A. Retention of the UNE-Platform

The Commission is extremely concerned that the FCC is considering modifications to the list of Unbundled Network Elements ("UNEs") and the availability of UNE-Platform ("UNE-P"). On November 20, 2002, this Commission, along 75 other State Commissioners from 33 other states, signed a letter to the FCC indicating support for continued State flexibility to maintain the UNE-P. The evidence in this proceeding demonstrates that

increased competition in Maryland exists in large measure because of the availability of UNE-P. With very limited UNE-P and resale, Maryland achieved a local competition level of only 4% as of December 2001. In six months time, according to the FCC's most recent report on the status of local competition, Maryland went from 4% to 6% in the level of competition due primarily to UNE-P. It appears that without UNE-P that growth vector will clearly be reduced. The Commission believes that any alteration from UNE-P as presently constituted would have significant adverse effects on the competitive market in Maryland. However, the Commission continues to assert that a FCC determination on these matters will not preempt further consideration by this Commission of the appropriate list of UNEs in Maryland.

B. §272/Affiliates

The Commission is concerned that Verizon's interactions with its affiliates are conducted on the same arms-length basis as its interactions with any unrelated CLEC, in order to ensure that local exchange customers do not subsidize the long distance customers. Consequently, the Commission intends to closely and actively monitor Verizon's compliance with the separate affiliate requirements and associated safeguards contained in §272 of the 1996 Act. In particular, the Commission will carefully review the biennial audit that Verizon is required to obtain and pay for under §272(d)(1), which audit must be submitted to this Commission in accordance with §272(d)(2). Furthermore, the Commission will participate fully in the biennial audit proceedings conducted by the FCC, and institute its own proceeding, if necessary.

C. E911

The Commission has reservations about Verizon's use of the information contained in the E911 database, which does not appear to be consistent with the purposes envisioned by the legislature when the E911 program was established. The E911 database was developed for a very specific purpose, to enable law enforcement and emergency service workers to locate people in emergency, and sometimes life threatening, situations. The E911 database was not developed for use in the manner Verizon has attempted to use it in this proceeding. Because the E911 database was not developed to provide local exchange carrier line counts, its use for this purpose is questionable, as are the results obtained through the database. Furthermore, these results are not verifiable. The Commission encourages Verizon to develop a more transparent and verifiable source of statistics to estimate the level of competition.

CONCLUSION

Upon implementation of these various operational enhancements, the Commission believes that continued development of a competitive market will occur in Maryland. That outcome is surely the intent of the 1996 Act and the FCC's goal as well. Thus, the envisioned reward of long distance entry to Verizon Maryland should be afforded them. To move Maryland more toward the national average in local competition is an outcome that will also surely benefit Maryland customers, both business customers and individual citizens alike.

Verizon is directed to respond to this letter with a written confirmation that Verizon will comply with the conditions set forth in items 1 through 10 above prior to filing its §271 application with the FCC.

By Direction of the Commission,

/s/Catherine I. Riley
Catherine I. Riley, Chairman

/s/J. Joseph Curran, III
J. Joseph Curran, III, Commissioner

/s/Gail C. McDonald
Gail C. McDonald, Commissioner

/s/Harold D. Williams
Harold D. Williams, Commissioner

cc: All Parties and Interested Persons of Record

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

REPORT OF
DIVISION OF COMMUNICATIONS

IN

CASE NO. PUC-2002-00088

ATTACHMENT 2

VERIZON (RESPONSE)
DECEMBER 17, 2002
LETTER TO
STATE OF MARYLAND PSC

(2 PAGES)

December 17, 2002

Hand Delivered

Felecia L. Greer
Executive Secretary
Public Service Commission
of Maryland
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202-6806

Re: Case No. 8921

Dear Ms. Greer:

This letter is to confirm that Verizon Maryland Inc. ("Verizon") will comply with the conditions set forth in items 1 through 10 in the December 16, 2002 letter of the Maryland Public Service Commission ("Commission"), a copy of which is attached.

In that letter, the Commission states that "Verizon is technically in compliance with the §271 checklist as defined by the FCC," but conditions its endorsement of Verizon's entry into the long distance market on Verizon agreeing to address the concerns listed in conditions 1 through 10. While these conditions are not necessary to satisfy the §271 checklist, Verizon nonetheless will comply with them as directed.

Moreover, Verizon's acceptance of Condition 10, "Unbundled Network Element ('UNE') Pricing," is based upon correction of an apparent inadvertent typographical error. In the third sentence of the third paragraph, the Commission directs Verizon "to adopt an interim rate-setting approach similar to that the Company employed and the FCC approved in Verizon Virginia's §271 filing." The rate-setting approach adopted in connection with the Verizon Virginia filing applied to interim recurring rates implementing the FCC's Line Sharing and UNE Remand orders and to certain non-recurring UNE rates, because the Virginia State Corporation Commission had not yet set such rates. This rate-setting approach was not needed for the permanent rates that the Virginia State Corporation Commission had already set. The Commission obviously intends Verizon to apply the Virginia methodology to the comparable rates in Maryland,

namely, the interim recurring rates for UNEs established by the FCC's Line Sharing and UNE Remand orders, and all non-recurring UNE rates – but not to the permanent rates already set by the Commission in Case No. 8731, Phase II. The Commission's letter, therefore, must have meant to say in the third sentence of the third paragraph concerning UNE pricing that "for the other rates ***not*** previously instituted in Case No. 8731, Phase II, ...", but inadvertently omitted the word "not". The list of rates attached to this letter in accordance with the Commission's direction reflects and complies with the Commission's obvious intent in Condition 10.

Verizon appreciates the Commission's efforts in bringing this important case to a successful conclusion. Verizon expects to file its §271 application for Maryland at the FCC shortly.

Very truly yours,

William R. Roberts

WRR/mlw

Attachments

cc: All Parties of Record and Interested Persons

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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CASE NO. PUC-2002-00088

ATTACHMENT 3

VERIZON
OSP HICAP FLASH
DOCUMENT
2001-00256-OSP

(25 PAGES)

Verizon Virginia Inc.
Confidential and proprietary information

(Pages 1-22 Omitted in redacted version)

July 19, 2001

«MR_MS» «FIRST» «LAST_NAME»
«TITLE»
«IC_COMPANY»
«ADDRESS»
«CITY», «STATE» «ZIP»

Dear «MR_MS» «LAST_NAME»:

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECS where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filled, but the provisioning interval is longer than normal. At the same time, Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a perceived *obligation* to construct new facilities.

Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3

network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment and the wire or fiber facility running to the end user and install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request, and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.

Sincerely,

Georgene Horton

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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ATTACHMENT 4

VERIZON
INFO FLASH
DOCUMENT
2001-00702-OSP

(6 PAGES)

Verizon Virginia Inc.
Confidential and proprietary information

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CASE NO. PUC-2002-00088

ATTACHMENT 5

VERIZON
NEW OPTIONAL
ASR PROCESS

(2 PAGES)

ATTACHMENT 5

verizon

November 22, 2002

Subject: New Optional ASR Process for Unbundled Loops in Verizon -EastDecision D.02-08-067

This letter is to inform you that Verizon is implementing an optional process, described below to handle ASRs for UNE HiCap services (UNE DS1 and DS3 Loops, UNE DS1 and DS3 Dedicated Transport and DS1 and DS3 EELs) that are rejected because facilities are not available to provision the requested facilities. This process will be available in the former Bell Atlantic service territories of Pennsylvania, Delaware, New Jersey, Virginia, West Virginia, Maryland, District of Columbia, Connecticut, Rhode Island, Vermont, New Hampshire, Massachusetts, and Maine on December 23, 2002. This process is already available in New York.

Currently, when an ASR for a UNE HiCap service cannot be provisioned because facilities are unavailable, the order is rejected, and Verizon requests that the CLEC cancel its ASR. Now, CLECs will have the option to request that such orders be forwarded to the Customer Access Team Center (CATC) to be provisioned as special access.

In order to use this new option, the AENG (Additional Engineering) field on the original UNE ASR must be populated with a "4." By populating this field, CLECs indicate that they want UNE HiCap ASRs that would otherwise be denied for no facilities to be sent to the CATC to be provisioned as special access service. Please note that the AENG field must be populated with a "4" on the original UNE HiCap ASR; CLECs may not supplement the original UNE HiCap ASR to add the "4." If the AENG field on the original UNE HiCap ASR is not populated, and there are no facilities available to provision the request, then the CLEC must cancel the order.

Once the CLEC has decided to use the new option and has populated the AENG field with a "4" on the original UNE HiCap ASR and facilities are not available to fulfill the order, the Verizon service representative will create a "SUP 4" on the UNE HiCap ASR and change the following fields in order to turn the UNE ASR into a special access ASR.

ATTACHMENT 5

ASR Field	From	To
SUPP	Blank	4
CC	4 digit company code	Blank
UNE	Y	Blank
PIU	0	100
SPEC	UNBALL or UNB1OT	Blank
REMRKS	CLEC's Remarks retained	Add Remarks on the ASR form: SUP to change ASR to special access
NCI	04QB9.11	04DS9.15 (Verizon North states only)
S25	Blank	A
ICSC	NJ01 CP10 PA01 (Codes stays the same in VZ - North)	NJ90 CP88 (CP37 for ACNA's ATX & LOA) PA70

Please note that the ICSC code will change on ASRs in the Verizon territories of PA, NJ, DE, MD, VA, WV, and DC. Any supplements issued to the ASR after it has been changed to special access must use the new ICSC code.

Verizon will then notify the CLEC via the Clarification Request Form that the ASR has been sent to the special access CATC. This notification will include the reason facilities were not available.

Please note that this new ordering process does not affect Verizon's policy to provide facilities to CLECs only where existing facilities are currently available. Verizon is not obligated to construct new UNEs where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers.

Please contact your Verizon Account Manager with any questions.

COMMONWEALTH OF VIRGINIA
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ATTACHMENT 6

VERIZON PROVISIONING FLOWCHARTS AND NARRATIVES

(7 PAGES)

Verizon Virginia Inc.
Confidential and proprietary information

(Omitted in redacted version)

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STATE CORPORATION COMMISSION

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ATTACHMENT 7

Staff Prepared
Estimate of Costs
Attributable to
Spare Investment Loadings

(1 PAGE)

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ATTACHMENT 8

Average Maintenance Factors

(4 PAGES)

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ATTACHMENT 9

Estimate of DS-1 Loop Costs Attributed to "M" Expenses In Case PUC-1997-00005 DS-1 Costs

(1 PAGE)

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ATTACHMENT 10

Comparison of DS-1 Rates From VERIZON FCC No. 1, VERIZON SCC-VA-No. 217, VERIZON SCC-VA-No. 204, And Case PUC-1997-00005

(1 PAGE)